



Public Service Commission

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RECORDS AND REPORTING

DATE: JUNE 24, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF APPEALS (BROWN) *MCB DS*
 DIVISION OF RESEARCH AND REGULATORY REVIEW (LEWIS) *PR*
 DIVISION OF COMMUNICATIONS (KENNEDY) *RK*

RE: DOCKET NO. 990206-TI - PROPOSED AMENDMENTS TO RULE 25-4.005, F.A.C., TRANSFER OF CERTIFICATE OF PUBLIC NECESSITY AS TO ALL OR A PORTION OF SERVICE AREAS.

AGENDA: JULY 6, 1999 - 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\CMU\WP\990206.RCM

CASE BACKGROUND

At its March 4, 1999, Agenda Conference, the Commission approved certain proposed amendments to Rule 25-24.005, Florida Administrative Code, which eliminated the requirement that companies provide the Commission with a list of all customers notified of a requested transfer of a certificate of public convenience and necessity. The proposed amendments were published in the Florida Administrative Weekly on April 2, 1999. Although the Commission received no comments or requests for hearing by substantially affected persons, the Commission did receive a letter from the Joint Administrative Procedures Committee (JAPC) on April 26, 1999, which delayed the filing of the amendments for adoption. (Attachment 1) In its letter, JAPC questioned a portion of

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subsection (4) of the rule that was not part of the amendments originally proposed. Staff has reviewed JAPC's comments and discussed with JAPC a change to the proposed amendments that will satisfy JAPC's concern. This recommendation addresses the proposed change.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission adopt the proposed amendments to Rule 25-24.005, Florida Administrative Code, Transfer of Certificate of Public Convenience and Necessity as to All or Portion of Service Area, with changes?

RECOMMENDATION: Yes. The Commission should delete the redlined language in the attached rule based on the comments filed by JAPC.

STAFF ANALYSIS: Subsection (4) of Rule 25-4.005, Florida Administrative Code, provides as follows:

(4) Any subscriber or group of subscribers of a telephone company may petition the Commission for transfer from the service area of such telephone company to that of another telephone company serving contiguous territory. After public hearing, if one is requested, the Commission may, ~~on a finding of just cause,~~ require such transfer and amend the existing certificates of the telephone companies involved or change the exchange service maps to reflect any changes found justified.

(Redlining highlights sentence in question)

The authority for this rule is found in sections 364.33 and 364.335, Florida Statutes. Section 364.33, Florida Statutes, "Certificate of necessity prerequisite to construction, operation, or control of telecommunications facilities", provides that a person may not begin construction, operation or control, including transfer, of a telecommunications facility without prior approval of the Commission. Section 364.335, "Application for certificate", provides the criteria for filing an application and for Commission approval of the application. Section 364.335 (4) provides that revocation, suspension, transfer, or amendment of a certificate are subject to the provisions of the section. Subsection (2) provides that the Commission may hold a hearing upon request of substantially affected persons or on its own motion, and subsection (3) provides that the Commission may grant the certificate or the

transfer in whole or in part, or with modifications in the public interest.

In its letter, JAPC claims that the redlined portion of subsection (4) of the rule is unacceptable because it permits the Commission to require a transfer and amend an existing certificate without providing standards or criteria to apprise the reader of when a transfer and amendment of the certificate will be required. JAPC also states that the subsection "contains no standards or criteria to apprise the reader of when transfer and amendment of certificates as opposed to changes of maps will be required".

While we do not agree with JAPC's comments, our review and analysis of the sentence in question leads us to the conclusion that the sentence is unnecessary in the rule. The statute provides that the Commission may conduct a hearing on any petition for transfer, and it is not necessary to repeat in the rule what the statute provides. It is sufficient to indicate that customers as well as companies may petition the Commission for a change or modification of a certificate and are entitled to a hearing on the petition. The scope and focus of the Commission's decision would then be determined by the petition and response, the testimony and evidence in the record, and the specific circumstances of the case.

Thus, because the section of the rule in question is unnecessary, staff recommends that the Commission change the proposed amendments to include deletion of the second sentence of subsection (4) of the rule. JAPC has indicated to staff that this change would be acceptable to it.

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ISSUE 2: Should the Commission file the rules for adoption with the attached changes and close this docket?

RECOMMENDATION: Yes.

STAFF ANALYSIS: If the Commission does not receive a challenge to the rules within 21 days after a Notice of Change is published in the Florida Administrative Weekly, the rules as approved may be filed for adoption with the Secretary of State without further Commission action. The docket may then be closed.

MCB

Attachments: JAPC Letter
Rule

TONI JENNINGS
President



Senator Walter "Skip" Campbell, Chairman
Representative Bill Posey, Vice Chairman
Senator Ginny Brown-Waite
Senator Lisa Carlton
Representative O. R. "Rick" Minton, Jr.
Representative Adam H. Putnam

JOHN THRASHER
Speaker



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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

April 26, 1999

Ms. Diana Caldwell
Division of Appeals
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Re: Public Service Commission Rule 25-4.005(4)

Dear Ms. Caldwell:

I have completed a review of the proposed amendments to rule 25-4.005 and prepared the following comments for your consideration and response.

Paragraph (4) provides that following a public hearing, if held, the Commission "may" require a transfer and amendment of existing certificates of telephone companies or change the exchange service area maps. However, the rule contains no standards or criteria to apprise the reader of whether or not transfer and amendment will be required under any circumstances. Further, the rule contains no standards or criteria to apprise the reader of when transfer and amendment of certificates as opposed to changes of maps will be required. The rule should be amended accordingly.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Rosner".

John Rosner
Staff Attorney

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2 25-4.005 Transfer of Certificate of Public Convenience and
3 Necessity As to All or Portion of Service Area.

4 (1) Request for approval by the Commission of transfer of any
5 certificate of public convenience and necessity (or portion
6 thereof) shall be made by joint petition of the certificate holder
7 and transferee after reasonable notice has been given to all
8 subscribers affected by the proposed transfer. Requests for
9 approval shall be accompanied by an affidavit that notice of
10 intention to file the petition has been given:

11 (a) By mail or personal delivery to the governing bodies of the
12 counties and municipalities affected, to the public counsel, and to
13 the Commission,

14 (b) By a legal advertisement in a newspaper of general circulation
15 in the area affected and published on two (2) separate occasions at
16 least two (2) weeks prior to the filing of the joint petition on
17 the proposed transfer, and

18 (c) By written notice subject to Commission approval, issued to
19 each subscriber in the area to be transferred concurrent with the
20 filing of the petition. ~~A complete lists, by telephone number~~
21 ~~(numerical sequence), name, address, and class of service of all~~
22 ~~subscribers sent a written notice shall be furnished the Commission~~
23 ~~immediately following distribution.~~

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

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2 (2) Upon approving a transfer of certificate, or portion thereof,
3 the Commission will cancel same and reissue in the name of the
4 transferee or amend the description of the service area or both.

5 (3) Such joint petitions shall include detailed descriptions of the
6 affected boundaries; the number of subscribers, if any, in each
7 petitioned area; changes in rates; service being provided by either
8 petitioner in areas to be transferred; pending applications for
9 service held by either petitioner; changes in calling scope;
10 customers to be transferred; deposits and deposit interest; any
11 financial exchange or consideration for the proposed change, and a
12 list by name and telephone number of all customers who will be
13 exempt from the proposed change.

14 (4) Any subscriber or group of subscribers of a telephone company
15 may petition the Commission for transfer from the service area of
16 such telephone company to that of another telephone company serving
17 contiguous territory. ~~After public hearing, if one is requested,~~
18 ~~the Commission may, on a finding of just cause, require such~~
19 ~~transfer and amend the existing certificates of the telephone~~
20 ~~companies involved or change the exchange service area maps to~~
21 ~~reflect any changes found justified.~~

22 (5) If a customer survey is conducted by a telephone company among
23 customers affected by the proposed transfer, return postage shall
24 be paid by the company serving the affected customer and survey
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2 ballots shall be returnable to the Public Service Commission,
3 Attention: Communications Department, for tabulation.
4 Specific Authority 350.127(2) FS.
5 Law Implemented 364.335 FS.
6 History--New 12-1-68, Amended 5-4-81, Formerly 25-4.05, _____.

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