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Public Service Commission
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COMMISSION
CLERK

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

DATE: June 2, 2005

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

FROM: Office of the General Counsel (Stern) *mks DS*
 Division of Competitive Markets & Enforcement (Pruitt, Watts) *J*
 Division of Economic Regulation (Hewitt) *CBT a [signature] JDS*

RE: Docket No. 041017-TI – Revisions to intrastate interexchange telecommunications company rules in Chapters 25-4 and 25-24, F.A.C., to reflect 2003 statutory changes.

AGENDA: 06/14/05 – Regular Agenda – Participation is limited to Commissioners and Staff

RULE STATUS: Rule Adoption – May be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCLWP\041017.RCM.DOC

Case Background

At the January 18, 2005 Agenda Conference, the Commission proposed changes to rules in Chapters 25-4 and 25-24, Florida Administrative Code. The proposed rules implemented the changes made to Chapter 364, Florida Statutes, in 2003. That rule package was referred to as the “IXC Rules.”

The changes to Chapter 25-4 have been filed for adoption. The Joint Administrative Procedures Committee (JAPC) had comments on some of the rules in Chapter 25-24, so that Chapter has not been filed for adoption. To address JAPC’s comments, some of the rules in Chapter 25-24 had to be revised. The rule revisions must be approved by the Commission before the rule can be filed for adoption.

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Discussion of Issues

Issue 1: Should the Commission adopt the revisions to Rules 25-24.455, 25-24.474, 25-24.480, and 25-24.600 that are shown in Attachment 1, and that were made to address comments from JAPC?

Recommendation: Yes. (Stem)

Staff Analysis: Attachment 1 contains the rules with the revisions made after January 18, 2005, in order to address JAPC's comments. The specific portions of each rule that were changed since January 18 are shaded.

Rule 25-24.455 – Scope and Waiver

Rule 25-24.455 addresses the scope of the rules governing service by IXC's and includes a provision for when those rules can be waived. JAPC questioned language in the subparagraph on waivers.

JAPC objected to the word "may" as used in the phrase "the Commission may grant a waiver" in the originally proposed rule. JAPC argued that it was an invalid exercise of delegated legislative authority because it was vague, and that the rule should be revised so that a petitioner knows when waiver will and will not be granted. The rule was revised to eliminate this problem, as shown below. The revision staff recommends does not change the criteria for granting a waiver.

(24) ~~An IXC interexchange company may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in part, or denied based on the following: The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The Commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:~~

- ~~(a) The factors enumerated in Section 364.337(4), Florida Statutes;~~
- ~~(ba) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived; and~~
- ~~(cb) Alternative regulatory requirements for the company which may serve the purposes of this part; and~~
- ~~(d) Whether the waiver is in the public interest.~~

Rule 25-24.474- Cancellation of Registration

This rule contains criteria for cancellation of an IXC's registration. Subparagraph (1) contains the criteria the Commission would use for canceling registration on its own motion. JAPC objected to use of the term "may" for the same reasons as explained for Rule 25-24.455. The rule was revised to eliminate this problem, as shown below. The revision staff recommends does not change the criteria for cancellation of registration.

(1) ~~The following are grounds for cancellation of Commission may on its own motion cancel a company's registration certificate for any of the following reasons:~~

- (a) Violation of the terms and conditions under which the authority was originally granted;
- (b) Violation of Commission rule or order; or
- (c) Violation of Florida Statutes.

Rule 25-24.480 – Records and Reports

As originally proposed, subparagraph (2) of this rule required that IXC's reimburse travel expenses when Commission staff had to inspect records kept out of state by IXC's. JAPC questioned the Commission's statutory authority to require such reimbursement. After additional scrutiny, staff concluded that because IXC's were no longer telecommunications companies, the Commission did not have the statutory authority to require such reimbursement. Staff deleted the provision, as shown below and in Attachment 1.

~~(2) Any IXC that keeps its records outside the State shall reimburse the Commission for the reasonable travel expense incurred by each Commission representative during any review of the out of state records of the IXC or its affiliates. Reasonable travel expenses are those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business.~~

~~(a) The IXC shall remit reimbursement for out of state travel expenses within 30 days from the date the Commission mails the invoice.~~

~~(b) The reimbursement requirement in subsection (2) shall be waived:~~

~~1. For any IXC that makes its out of state records available at its office located in Florida or at another mutually agreed upon location in Florida within 10 working days from the Commission's initial request. If 10 working days is not reasonable because of the complexity and nature of the issues involved or the volume and type of material requested, the Commission may establish a different time frame for the IXC to bring records into the state. For individual data requests made during an audit, the response time frame established in Rule 25-4.0201, F.A.C., shall control; or~~

~~2. For an IXC whose records are located within 50 miles of the Florida state line.~~

Rule 25-24.600 – Application and Scope of Rules Governing Operator Service Providers

Subparagraph (3) of this rule allows any company subject to the laws on operator services to apply for a waiver from those laws. JAPC questioned the Commission's authority to make such a rule. Staff recommends deleting (3) because it is unnecessary. Section 366.337(2), Florida Statutes, identifies who can apply for statutory waivers and it does not need to be repeated in the rule. Subparagraph (3) has been deleted as shown below and in Attachment 1.

~~(3) — Each company subject to this Part may petition for exemption from applicable portions of Chapter 364, Florida Statutes, or for application of different requirements than those prescribed for telecommunications companies in Chapter 364, Florida Statutes, under the authority of Section 364.377, Florida Statutes.~~

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

Recommendation: Yes. After a Notice of Change is published in the Florida Administrative Weekly, the rule should be filed for adoption with the Secretary of State 21 days thereafter and the docket may be closed. (Stern)

Staff Analysis: If the Commission approves the change to Rules 25-24.455, 25-24.474, 25-24.480, and 25-24.600, a notice of change must be published. After the notice is published, or if the rule is adopted without changes, the rule may be filed for adoption with the Secretary of State without further Commission action. The docket may then be closed.

1 **25-24.455 Scope and Waiver.**

2 (1) This ~~Part~~ applies only to Intrastate Interexchange Companies (IXCs). As
 3 provided by Rules 25-4.002, 25-9.001 and 25-14.001, F.A.C., no provision of Chapters 25-4,
 4 25-9, or 25-14, F.A.C., shall apply to ~~IXCs~~ Interexchange Companies, except as provided by
 5 this part.

6 (2) ~~To the extent these rules are inconsistent with provisions of Chapter 364,~~
 7 ~~Florida Statutes, telephone companies subject to this Part are exempted from such provisions~~
 8 ~~or are subject to different requirements than otherwise prescribed for telephone companies~~
 9 ~~under the authority of Section 364.337, Florida Statutes.~~

10 (3) ~~Any interexchange company may petition for exemption from applicable~~
 11 ~~portions of Chapter 364, Florida Statutes, or for application of different requirements than~~
 12 ~~otherwise prescribed for telephone companies by Chapter 364, Florida Statutes, under the~~
 13 ~~authority of Section 364.337, Florida Statutes.~~

14 (24) An IXC ~~interexchange company~~ may petition for a waiver of any provision of
 15 this Part. The waiver shall be granted in whole, granted in part, or denied based on the
 16 following: The Commission may grant a waiver to the extent that it determines that it is
 17 consistent with the public interest to do so. The Commission may grant the petition in whole
 18 or part, may limit the waiver to certain geographic areas and/or may impose reasonable
 19 alternative regulatory requirements on the petitioning company. In disposing of a petition, the
 20 Commission may consider:

21 (a) The factors enumerated in Section 364.337(4), Florida Statutes;

22 (a) ~~b~~ (b) The extent to which competitive forces may serve the same function as, or
 23 obviate the necessity for, the provision sought to be waived; ~~and~~

24 (b) ~~c~~ (c) Alternative regulatory requirements for the company which may serve the
 25 purposes of this part; ~~and~~

1 ~~(d) Whether the waiver is in the public interest.~~

2 ~~(5) Any statutory exemptions or rule waivers granted prior to the adoption of this~~
 3 ~~rule are void, and to the extent not covered in this rule, must be renewed.~~

4 *Specific Authority 350.127(2) FS.*

5 *Law Implemented 364.01, 364.02, 364.337(4) FS.*

6 *History—New 2-23-87.*

7
 8 **25-24.474 Cancellation of a Certificate Registration.**

9 (1) The following are grounds for cancellation of ~~Commission may on its own~~
 10 ~~motion cancel~~ a company's registration certificate for any of the following reasons:

11 (a) Violation of the terms and conditions under which the authority was originally
 12 granted;

13 (b) Violation of Commission rule or order; or

14 (c) Violation of Florida Statutes.

15 (2) ~~If a registered-certificated~~ company desires to cancel its registration certificate,
 16 it shall request cancellation from the Commission in writing and shall provide the following
 17 with its request;

18 (a) ~~Statement of intent and date to pay~~ Current and any past due Regulatory
 19 Assessment Fees, and the associated penalty and interest; and

20 ~~(b) Statement of why the certificate is proposed to be cancelled.~~

21 ~~(be)~~ A statement on treatment of customer deposits and final bills.

22 ~~(d) Proof of individual customer notice regarding discontinuance of service.~~

23 (3) Cancellation of the IXC registration ~~Cancellation of a certificate~~ shall be
 24 granted ~~ordered~~ subject to the holder providing the information required by subsection (2).

25 *Specific Authority 350.127(2) FS.*

1 *Law Implemented 350.113, 350.127(1), 364.02, 364.285, ~~364.337, 364.345~~ FS.*

2 *History—New 2-23-87, Amended 3-13-96.*

3

4 **25-24.480 Records and Reports; Rules Incorporated.**

5 (1) Each IXC shall remit Regulatory Assessment Fees in accordance with Rule 25-
6 4.0161, F.A.C.

7 (2) Any IXC that keeps its records outside the State shall reimburse the
8 Commission for the reasonable travel expense incurred by each Commission representative
9 during any review of the out-of-state records of the IXC or its affiliates. Reasonable travel
10 expenses are those travel expenses that are equivalent to travel expenses paid by the
11 Commission in the ordinary course of its business.

12 (a) The IXC shall remit reimbursement for out-of-state travel expenses within 30
13 days from the date the Commission mails the invoice.

14 (b) The reimbursement requirement in subsection (2) shall be waived:

15 1. For any IXC that makes its out-of-state records available at its office located in
16 Florida or at another mutually agreed upon location in Florida within 10 working days from
17 the Commission's initial request. If 10 working days is not reasonable because of the
18 complexity and nature of the issues involved or the volume and type of material requested, the
19 Commission may establish a different time frame for the IXC to bring records into the state.
20 For individual data requests made during an audit, the response time frame established in Rule
21 25-4.0201, F.A.C., shall control; or

22 2. For an IXC whose records are located within 50 miles of the Florida state line.

23 (2) Each IXC shall furnish to the Commission at such times and in such form as
24 the Commission may require, the results of any required tests and summaries of any required
25 records. The IXC shall also furnish the Commission with any information concerning the

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

IXC's facilities or operations which the Commission may reasonably request and require. All such data, unless otherwise specified, shall be consistent with and reconcilable with the IXC's regulatory assessment fee report to the Commission.

(3) Where an IXC is operated with another enterprise, records must be separated in such manner that the results of the IXC operations may be determined at any time.

(4) Upon notification to the IXC, members may, at reasonable times, make personal visits to the company offices or other places of business within or without the State and may inspect any accounts, books, records, and papers of the IXC which may be necessary in the discharge of Commission duties. Commission staff members will present Commission identification cards as the written authority to inspect records. During such visits the IXC shall provide the staff member(s) with adequate and comfortable working and filing space, consistent with the prevailing conditions and climate, and comparable with the accommodations provided the IXC's outside auditors.

~~(1) The following rules are incorporated herein by reference and apply to interexchange companies. In these rules, the word "local" should be omitted or interpreted as "toll", as they shall apply only to interexchange and not local service.~~

<u>Section</u>	<u>Title</u>	<u>Portions Not Applicable</u>
25-4.019	Records and Reports in General	None
25-4.020	Location and Preservation of Records	Subsections (1), (3)
25-4.023	Report of Interruptions	Subsection (1)
25-4.043	Inquiries	None
25-4.0161	Regulatory Assessment Fees	None
25-4.079	Hearing/Speech Impaired Persons	Subsections (1), (2), (3), and (5)

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1 ~~25-4.115~~ Directory Assistance ~~Subsections (1) and (2)~~

2 ~~(2)~~ Each company shall file updated information for the following items with the
3 Division of Competitive Markets and Enforcement and the Division of the Commission Clerk
4 and Administrative Services within 10 days after such changes occur.

5 ~~(a)~~ The address of the certificate holder's main corporate and Florida offices (if
6 any), including street name and address and post office box, city, state and zip code.

7 ~~(b)~~ Telephone number, name, and address of the individual who is to serve as
8 primary liaison with the Commission in regards to the ongoing Florida operations of the
9 certificated company.

10 ~~(3)~~ Each company shall file form PSC/CMP 38 (date) with the Division of
11 Competitive Markets and Enforcement by January 31 of each year. Form PSC/CMP 38 (date),
12 entitled IXC Annual Report Form, is incorporated by reference into this rule and may be
13 obtained from the Division of Communications.

14 *Specific Authority 350.127(2) FS.*

15 *Law Implemented 350.113, ~~350.115~~, 350.117, ~~364.01(4)~~, 364.02, 364.336, ~~364.17~~, ~~364.18~~,*
16 *~~364.185~~, ~~364.337~~, ~~427.704~~ FS.*

17 *History—New 2-23-87, Amended 4-5-88, 7-11-88, 6-3-90, 10-25-90, 11-20-91, 12-29-91, 12-*
18 *22-92, 12-27-94, 3-13-96, 10-1-96.*

19

20 **25-24.600 Application and Scope.**

21 (1) The term “company” for the purpose of this Part also includes IXCs.

22 ~~(2)~~ This Part applies to:

23 (a) Every company that provides operator services as defined in Section 364.02,
24 Florida Statutes,

25 (b) Every company that bills and collects in its own name for operator services

1 provided by other entities, and

2 (c) Call aggregators as defined in this part.

3 (2) ~~In addition to the rules contained in this Part, every company providing~~
4 ~~operator services shall also comply with the rules contained in Part X of Chapter 25-24,~~
5 ~~F.A.C.~~

6 (3) ~~Each company subject to this Part may petition for exemption from applicable~~
7 ~~portions of Chapter 364, Florida Statutes, or for application of different requirements than~~
8 ~~those prescribed for telecommunications companies in Chapter 364, Florida Statutes, under~~
9 ~~the authority of Section 364.377, Florida Statutes.~~

10 *Specific Authority 350.127(2), 364.3376(8) FS.*

11 *Law Implemented 364.01, 364.3376 FS.*

12 *History—New 9-6-93, Amended 9-10-97, 2-1-99.*

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