

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 7, 2005

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

FROM: Office of the General Counsel (Moore, Rojas) *CM*
Division of the Commission Clerk & Administrative Services (Belcher, Flynn) *KB*
Division of Competitive Markets & Enforcement (Isler, Kennedy) *IF*
Division of Economic Regulation (Hewitt) *HS*

RE: Docket No. 050378-TP – Proposed amendment of Rule 25-4.0161, F.A.C.,
Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 07/19/05 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050378.RCM.DOC

Case Background

Sections 350.113 and 364.336, Florida Statutes, require each telecommunications company to pay a regulatory assessment fee (RAF) to the Commission to fund the Commission's costs of regulation. Subsection 350.113(4) requires the Commission to collect interest and penalties for late payment of RAF and all costs of collection. The late payment penalty is set by the statute at five percent for each 30 days the payment is late, not to exceed a total penalty of 25 percent. The interest rate is set by the Commission in Rule 25-4.0161(8)(b), Florida Administrative Code, at 12 percent. In addition, section 364.285, Florida Statutes, authorizes the Commission to impose a penalty on any entity subject to its jurisdiction for any refusal to comply with or willful violation of a Commission rule or order. The amount of the penalty or

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fine under section 364.285 is left to the Commission's discretion, subject to a cap of \$25,000 per offense. The Commission typically imposes the section 364.285 penalty for a company's violation of the RAF rule by failing to timely file the RAF form, and it is typically in the amount of \$500 for a first violation. *E.g.*, Order No. PSC-04-1271-PAA-TC issued December 23, 2004. In order for this penalty to be assessed under current practice, staff must file a recommendation for the Commission's action at an agenda conference.

In 2003 there were 619 telecommunications companies that were delinquent in paying their RAF. Of those, staff established 134 dockets after its efforts to contact the companies and collect the fee without an order by the Commission were unsuccessful. Depending on when during the collection process the fee is actually collected, the collection costs for delinquent RAF range from \$200 to \$430 per company.

A notice of proposed rule development to amend Rule 25-4.0161 to codify penalty amounts was published in the Florida Administrative Weekly and sent to each certificated or registered telecommunications company. A workshop was not requested and none was held.

Discussion of Issues

Issue 1: Should the Commission amend Rule 25-4.0161, Florida Administrative Code, to specify the penalty to be imposed for violating the rule's requirement to file a regulatory assessment fee return by the due date?

Recommendation: Yes. (Moore, Rojas, Belcher, Flynn, Isler, Kennedy, Hewitt)

Staff Analysis: Staff recommends adding subsections (9) through (13) to Rule 25-4.0161 to specify the procedures to be followed and the penalties that will be imposed when a company fails to file a regulatory assessment fee return and pay the fee by the due date. By adopting a rule that specifies the penalties to be levied for each offense, staff believes that more aspects of the RAF collection process can be handled administratively and more efficiently.

The monetary penalty that is authorized by subsection 364.285(1), Florida Statutes, is stated in the rule and is in addition to the statutory charges that are mandated by subsection 350.113(4) and that are calculated according to that statute and subsection (8) of the rule. The rule will require staff to send a delinquency notice, and the penalty will be imposed upon a certificated or registered telecommunications company that fails to pay the RAF within 15 days after receiving a delinquency notice. A docket will be established and the telecommunications company will be notified of the penalty through a proposed agency action order that is issued administratively.

The amount of the penalty increases based on the number of times the company has failed to pay RAF by the deadline imposed in a delinquency notice. The penalty for a first violation is \$500, \$1,000 for a second violation, and \$2,000 for a third violation. Because the amount of the penalty is set by rule, it would not be negotiable. If the company fails to pay the full amount stated in the Notice of Proposed Agency Action, the company's certificate will be

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cancelled or, for an interexchange carrier (IXC), its name will be removed from the Commission's register. As with any other proposed agency action order issued by the Commission, the affected party will have an opportunity to protest the order and request a hearing. If a company fails for a fourth time to pay the RAF after being sent a delinquency notice, the rule requires staff to file a recommendation to the Commission for further action, but does not specify what that action will be. Subsection (13) of the rule provides that a company that reapplies for a certificate or for registration must pay all prior unpaid RAF and RAF penalties.

The proposed rule amendment is intended to streamline the RAF collection process, significantly reduce the cost to the Commission for collecting RAF, and help ensure consistent treatment of certificated and registered telecommunications companies.

Statement of Estimated Regulatory Cost

It is anticipated that implementation of the rule will result in a decrease in enforcement costs for collection of delinquent RAFs. A Statement of Estimated Regulatory Cost (SERC) is attached. (Attachment B.)

Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Moore)

Staff Analysis: Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

Attachments

Rule 25-4.0161

SERC

1 | 25-4.0161 Regulatory Assessment Fees; Telecommunications Companies.

2 | (1) As applicable and as provided in Sections 350.113, 364.02(13) and 364.336,
3 | Florida Statutes, each company shall remit a fee based upon its gross operating revenue as
4 | provided below. This fee shall be referred to as a regulatory assessment fee, and each
5 | company shall pay a regulatory assessment fee in the amount of 0.0020 of its gross operating
6 | revenues derived from intrastate business. For the purpose of determining this fee, each
7 | telecommunications company shall deduct from gross operating revenues any amount paid to
8 | another telecommunications company for the use of any telecommunications network to
9 | provide service to its customers. Regardless of the gross operating revenue of a company, a
10 | minimum annual regulatory assessment fee of \$50 shall be imposed.

11 | (2) Telecommunications companies that owed gross regulatory assessment fees of
12 | \$10,000 or more for the preceding calendar year shall pay the fee and remit the appropriate
13 | form twice a year. The regulatory assessment fee and appropriate form shall be filed no later
14 | than July 30 for the preceding period of January 1 through June 30, and no later than January
15 | 30 of the following year for the period of July 1 through December 31. Telecommunications
16 | companies that owed gross regulatory assessment fees of less than \$10,000 for the preceding
17 | calendar year shall pay the fee and remit the appropriate form once a year. The regulatory
18 | assessment fee and appropriate form shall be filed no later than January 30 of the subsequent
19 | year for the current calendar year operations.

20 | (3) If the due date falls on a Saturday, Sunday, or legal holiday, the due date is
21 | extended to the next business day. If the fees are sent by registered mail, the date of the
22 | registration is the United States Postal Service's postmark date. If the fees are sent by certified
23 | mail and the receipt is postmarked by a postal employee, the date on the receipt is the United
24 | States Postal Service's postmark date. The postmarked certified mail receipt is evidence that
25 | the fees were delivered. Regulatory assessment fees are considered paid on the date they are

1 postmarked by the United States Postal Service or received and logged in by the
2 Commission's Division of the Commission Clerk and Administrative Services in Tallahassee.
3 Fees are considered timely paid if properly addressed, with sufficient postage, and postmarked
4 no later than the due date.

5 (4) Commission Form PSC/CMP 25 (01/05), entitled "Local Exchange Company
6 Regulatory Assessment Fee Return"; Form PSC/CMP 26 (01/05), entitled "Pay Telephone
7 Service Provider Regulatory Assessment Fee Return"; Form PSC/CMP 34 (01/05), entitled
8 "Shared Tenant Service Provider Regulatory Assessment Fee Return"; Form PSC/CMP 153
9 (01/05), entitled "Interexchange Company Regulatory Assessment Fee Return"; Form
10 PSC/CMP 1 (01/05), entitled "Alternative Access Vendor Regulatory Assessment Fee
11 Return"; and Form PSC/CMP 7 (01/05), entitled "Competitive Local Exchange Company
12 Regulatory Assessment Fee Return" are incorporated into this rule by reference and may be
13 obtained from the Commission's Division of the Commission Clerk and Administrative
14 Services.

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

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

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

19 (6) Where the company remits less than its full fee, the remainder of the full fee shall
20 be due on or before the 30th day from the due date and shall, where the amount remitted was
21 less than 90 percent of the total regulatory assessment fee, include interest as provided by
22 paragraph (8)(b) of this rule.

23 (7) A company may request from the Division of the Commission Clerk and
24 Administrative Services a 30-day extension of its due date for payment of regulatory
25 assessment fees or for filing its return form.

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

8 (b) The request for extension must be received by the Division of the Commission
9 Clerk and Administrative Services at least two weeks before the due date.

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

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

17 (8) The delinquency of any amount due to the Commission from the
18 telecommunications company pursuant to the provisions of Section 350.113, Florida Statutes,
19 and this rule, begins with the first calendar day after any date established as the due date either
20 by operation of this rule or by an extension pursuant to this rule.

21 (a) A penalty, as set out in Section 350.113, Florida Statutes, shall apply to any such
22 delinquent amounts.

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

25 (9) The Division of the Commission Clerk and Administrative Services shall send by

1 certified mail a regulatory assessment fee delinquency notice to any company that fails to file
2 a regulatory assessment fee return and that fails to pay the regulatory assessment fee by the
3 date specified in subsection (2), unless the company has met the requirements of subsections
4 (6) and (7).

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

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

21 (a) First violation – \$500

22 (b) Second violation – \$1,000

23 (c) Third violation – \$2,000

24 Failure of the company to pay the full amount due and stated in the Notice of Proposed
25 Agency Action will result in the cancellation of the company's Certificate of Public

1 Convenience and Necessity, or will result in the cancellation of the company's tariff and
2 removal of its name from the Commission's register, whichever is applicable.

3 (12) For a company's fourth failure to pay the regulatory assessment fee after being
4 sent a delinquency notice, Commission staff shall file a recommendation to the Commission
5 for further action.

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

10 Specific Authority 350.127(2) FS.

11 Law Implemented 350.113, 364.285, 364.336 FS.

12 History--New 5-18-83, Formerly 25-4.161, Amended 10-19-86, 1-1-91, 12-29-91, 1-8-95, 12-
13 26-95, 7-7-96, 11-11-99, 12-7-04 _____.

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

DATE: May 16, 2005
TO: Office of General Counsel (Moore)
FROM: Division of Economic Regulation (Hewitt) *BA* *OK* *HP* *✓*
RE: Statement of Estimated Regulatory Costs for Proposed Rule Amendments to 25-4.0161, F.A.C., Regulatory Assessment Fees

SUMMARY OF THE RULE

Rule 25-4.0161, F.A.C., Regulatory Assessment Fees (RAFs) sets the rate at which telecommunications companies are assessed for regulatory costs and the procedures and penalties for dealing with delinquent RAFs. Currently, companies typically settle a first-offense RAF docket with a negotiated settlement that could be \$500 or less. Any penalty fees paid have collection costs of the Commission deducted, with any remainder deposited in the General Revenue Fund.

The proposed rule amendments would streamline the RAF collections process by codifying the penalty amount per violation, which would include collection costs, and define when a penalty would be imposed for nonpayment. The proposed rule changes would impose a firm \$500 penalty for a first time offense with higher penalties for subsequent violations.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The telecommunications companies certificated or registered by the Commission would be affected. As of April 25, 2005, there were 10 incumbent local exchange companies (ILECs), 27 alternative access vendors (AAVs), 459 competitive local exchange companies (CLECs), 487 payphone companies, 42 shared tenant services companies and 614 interexchange companies currently active. Any increase in penalties paid would be paid by those companies that become delinquent by not paying their RAFs by the due date.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The usual rule implementation costs would be incurred with this rule change. The Commission would benefit by reducing staff labor. Enforcement costs should decrease with the rule changes because of a streamlined collection process and a decrease in the amount of staff effort to collect delinquent RAFs. The costs for materials, postage, phone calls, and facsimile transmissions would be reduced. There could be a slightly positive impact on Commission

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revenues from the higher penalty rates for tardy RAF submissions because collection costs would more likely be covered.

If there were other governmental entities that have telecommunications certificates and pay late RAF fee penalties, they would face the same increased penalties as other telecommunications companies paying late.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Regulated companies would have to prepare and submit their RAF forms to the Commission as usual and would have no transactional costs if their RAFs are paid on time. But those companies that are not diligent in submitting RAFs on time could pay a higher late fee.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

Small businesses, cities, and counties that have telecommunications certificates would face the same higher late fee penalties as the larger entities. The main benefit would come from a more certain late fee collection process and from the reduced effort in the late fee collection process.

CH:kb

cc: Ray Kennedy
Hurd Reeves