

ORIGINAL

STATE OF FLORIDA

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OFFICE OF THE GENERAL COUNSEL
RICHARD D. MELSON
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

July 21, 2005

Mr. Scott Boyd, Executive Director
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

RECEIVED FPSC
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COMMISSION
CLERK

RE: Docket No. 050378-TP, Rule 25-4.0161

Dear Mr. Boyd:

Enclosed is an original copy of the following materials concerning the above referenced proposed rule:

1. A copy of the rule.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal standards statement.
5. A statement of estimated regulatory costs.

If there are any questions with respect to this these rule, please do not hesitate to

call me.

Sincerely,

Christiana T. Moore
Associate General Counsel

DOCUMENT NUMBER-DATE
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 cc: Division of the Commission Clerk
 and Administrative Services
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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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NOTICE OF PROPOSED RULEMAKING
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050378-TP

RULE TITLE:

RULE NO.:

Regulatory Assessment Fees; Telecommunications Companies 25-4.0161

PURPOSE AND EFFECT: The purpose of the rule amendment is to streamline the process of Regulatory Assessment Fee (RAF) collections by codifying the penalty amount and defining when a penalty will be imposed upon a certificated or registered telecommunications company that fails to pay RAF. The changes should reduce the Commission's cost of collecting RAFs and ensure all certificated and registered companies are treated consistently.

SUMMARY: The rule amendment codifies the procedures to be followed and the penalty amounts to be imposed for a telecommunications company's filing of a regulatory assessment fee return after the due date and after the company has received a delinquency notice.

SUMMARY OF 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. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), FS

LAW IMPLEMENTED: 350.113, 364.285, 364.336, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE

SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND

ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR

INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE THESE PROPOSED RULE(S) IS:

Christiana T. Moore, Florida Public Service Commission, 2540 Shumard Oak Blvd.,

Tallahassee, Florida 32399-0862, (850) 413-6245, cmoore@psc.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-4.0161 Regulatory Assessment Fees; Telecommunications Companies.

(1) thru (8) No change.

(9) The Division of the Commission Clerk and Administrative Services shall send by certified mail a regulatory assessment fee delinquency notice to any company that fails to file a regulatory assessment fee return and that fails to pay the regulatory assessment fee by the date specified in subsection (2), unless the company has met the requirements of subsections (6) and (7).

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

stated in subsection (8) above, and must also pay the applicable penalty stated in subsection (11) for failure to file the regulatory assessment fee return.

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

(a) First violation – \$500

(b) Second violation – \$1,000

(c) Third violation – \$2,000

Failure of the company to pay the full amount due and stated in the Notice of Proposed Agency Action will result in the cancellation of the company's Certificate of Public Convenience and Necessity, or will result in the cancellation of the company's tariff and removal of its name from the Commission's register, whichever is applicable.

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

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

Specific Authority 350.127(2) FS.

Law Implemented 350.113, 364.285, 364.336 FS.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Ray Kennedy

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: July 19, 2005.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 31, Number 11, March 18, 2005

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings. Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE

In 2003 there were 619 telecommunications companies that were delinquent in paying their regulatory assessment fees ("RAF"). Of those, dockets were established for the 134 companies that had not paid after staff's 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. 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. By adopting a rule that specifies the penalties to be levied for each offense, more aspects of the RAF collection process can be handled administratively and more efficiently, resulting in a decrease in enforcement costs for collection of delinquent RAFs.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.

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: May 16, 2005
TO: Office of General Counsel (Moore)
FROM: Division of Economic Regulation (Hewitt) *GA* *OK* *1/1*
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

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