

ORIGINAL



COMMISSIONERS:  
LISA POLAK EDGAR  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

OFFICE OF THE GENERAL COUNSEL  
MICHAEL G. COOKE  
GENERAL COUNSEL  
(850) 413-6199

06 DEC 22 AM 11:11

COMMISSION  
CLERK

# Public Service Commission

December 22, 2006

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

RE: Docket No. 060554-TL – Proposed adoption of Rule 25-4.084, F.A.C., Carrier-of-Last-Resort; Multitenant Business and Residential Properties

Dear Mr. Boyd:

Enclosed are the following material 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 rule, please do not hesitate to call me.

Sincerely,

Christiana T. Moore  
Associate General Counsel

CMP \_\_\_\_\_  
 COM \_\_\_\_\_  
 CTR \_\_\_\_\_  
 ECR \_\_\_\_\_  
 GCL \_\_\_\_\_  
 OPC \_\_\_\_\_  
 RCA \_\_\_\_\_  
 SCR \_\_\_\_\_  
 SGA \_\_\_\_\_  
 SEC 1 \_\_\_\_\_  
 OTH \_\_\_\_\_

060554 JAPC.ctm.doc

Enclosures

cc: Division of the Commission Clerk  
and Administrative Services

Rule 25-4.084

DOCUMENT NUMBER-DATE

11693 DEC 22 06

FPSC-COMMISSION CLERK

1        25-4.084 Carrier-of-Last-Resort; Multitenant Business and Residential Property.

2        (1) A petition for waiver of the carrier-of-last-resort obligation to a multitenant  
3 business or residential property pursuant to Section 364.025(6)(d), Florida Statutes, shall be  
4 filed with the Division of the Commission Clerk and Administrative Services and shall be  
5 delivered by hand delivery on the same day, or by overnight mail on the day following filing,  
6 upon the relevant owners or developers together with a copy of section 364.025(6) and this  
7 rule.

8        (2) A petition for waiver of the carrier-of-last-resort obligation shall be limited to a  
9 single development.

10        (3) The petition must include the following:

11        (a) The name, address, telephone number, electronic mail address, and any facsimile  
12 number of the petitioner;

13        (b) The name, address, telephone number, electronic mail address, and any facsimile  
14 number of the attorney or qualified representative of the petitioner if any;

15        (c) The address or other specific description of the property for which the waiver is  
16 requested;

17        (d) The specific facts and circumstances that demonstrate good cause for the waiver  
18 as required by Section 364.025(6)(d);

19        (e) A statement that interested persons have 14 calendar days from the date the  
20 petition is received to file a response to the petition with the Commission, unless the  
21 fourteenth day falls on a Saturday, Sunday, or holiday, in which case the response must be  
22 filed no later than the next working day; and

23        (f) A statement certifying that delivery of the petition has been made on the relevant  
24 owners or developers and the method of delivery.

25        (4) A response to a petition must include the following:

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

1           (a) The name, address, telephone number, electronic mail address, and any facsimile  
2 number of the respondent;

3           (b) The name, address, telephone number, electronic mail address, and any facsimile  
4 number of the attorney or qualified representative of the respondent if any upon whom  
5 service of pleadings and other papers shall be made; and

6           (c) Whether the respondent disputes the facts and circumstances alleged in the  
7 petition.

8 Specific Authority 350.127(2) FS.

9 Law Implemented 364.025 FS.

10 History–New.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060554-TL

RULE TITLE:

RULE NO.:

Carrier-of-Last-Resort; Multitenant Business and Residential Property 25-4.084

PURPOSE AND EFFECT: To specify the requirements for a local exchange company to petition the Commission for relief if it is not automatically relieved of its Carrier-of-Last-Resort (COLR) obligations as defined in Section 364.025(6)(b)1 through 4, F.S., for a multitenant business or residential property.

SUMMARY: The rule implements Section 364.025(6)(d), F.S., providing notice and filing requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: There should be little or no impact on individuals or companies subject to this rule.

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: 364.025, 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 PROPOSED RULE IS: Christiana T. Moore, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6098.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-4.084 Carrier-of-Last-Resort; Multitenant Business and Residential Property.

(1) A petition for waiver of the carrier-of-last-resort obligation to a multitenant business or residential property pursuant to Section 364.025(6)(d), Florida Statutes, shall be filed with the Division of the Commission Clerk and Administrative Services and shall be delivered by hand delivery on the same day, or by overnight mail on the day following filing, upon the relevant owners or developers together with a copy of section 364.025(6) and this rule.

(2) A petition for waiver of the carrier-of-last-resort obligation shall be limited to a single development.

(3) The petition must include the following:

(a) The name, address, telephone number, electronic mail address, and any facsimile number of the petitioner;

(b) The name, address, telephone number, electronic mail address, and any facsimile number of the attorney or qualified representative of the petitioner if any;

(c) The address or other specific description of the property for which the waiver is requested;

(d) The specific facts and circumstances that demonstrate good cause for the waiver as required by Section 364.025(6)(d);

(e) A statement that interested persons have 14 calendar days from the date the petition is received to file a response to the petition with the Commission, unless the fourteenth day falls on a Saturday, Sunday, or holiday, in which case the response must be filed no later than the next working day; and

(f) A statement certifying that delivery of the petition has been made on the relevant owners or developers and the method of delivery.

(4) A response to a petition must include the following:

(a) The name, address, telephone number, electronic mail address, and any facsimile number of the respondent;

(b) The name, address, telephone number, electronic mail address, and any facsimile number of the attorney or qualified representative of the respondent if any upon whom service of pleadings and other papers shall be made; and

(c) Whether the respondent disputes the facts and circumstances alleged in the petition.

Specific Authority 350.127(2) FS.

Law Implemented 364.025 FS.

History–New.

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: December 19, 2006.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 32,  
Number 34, August 25, 2006

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

Section 2 of Chapter 2006-80, Laws of Florida (Senate Bill 142), amended section 364.025, Florida Statutes, governing universal service, to provide that a local exchange telecommunications company is automatically relieved from its carrier-of-last-resort obligation (COLR) under certain enumerated circumstances. Paragraph (6)(d) of section 364.025, Florida Statutes, provides that a local exchange company (LEC) that is not automatically relieved of its COLR obligation may petition the Florida Public Service Commission for a waiver of the obligation for good cause shown based on the facts and circumstances of provision of service to the multitenant business or residential property. The LEC filing such a petition is required to give notice at the same time to the building owner or developer. The Commission has 90 days to act on the petition. The Commission is required to implement paragraph (6)(d) through rulemaking.

At the rule development workshop and in post-workshop comments, the LECs asserted that the rule should include several factors that the Commission will consider in determining whether good cause exists for a waiver of the COLR obligation. These include whether the property owner or developer has entered into an agreement with another communications service provider or a provider of data, video or other services, and the effect of the agreement on the LEC's provision of service. Another factor is whether residents, tenants or occupants of the property have access to communications service from a source other than the LEC.

The Real Access Alliance, Lennar Developers, and FCTA opposed stating in the rule what constitutes good cause. Rather, they asked that the Commission limit the scope of its good cause inquiry to voice service and that any limitations imposed by the developer on a LEC's ability to provide any service other than voice service should not be a consideration in the Commission's determination. The Florida Real Access Alliance also asked for the rule to articulate facts and circumstances, or actions taken by a property owner, that do not constitute good cause. Lennar Developers further asked that the Commission make clear in the rule that "good cause" is limited to a physical impairment in the COLR provider's ability to provide communications service (voice service or voice replacement service), or a significant economic impairment that results in precluding construction and operation of the provider's network to the premises and end users.

Given the significant differences of opinions of property owners and developers and the LECs, the Commission believes that it is premature at this time to define good cause in the rule, or to mandate what factors it will consider in making its determination. Whether or not good cause is established should be determined on a case-by-case basis until the Commission gains some experience with adjudicating petitions for waiver of the COLR obligation based upon actual facts and circumstances, or by adjudicating complaints, so that it will have sufficient knowledge to address "good cause" by rulemaking.<sup>1</sup>

---

<sup>1</sup> There are two complaints and one petition for waiver of the COLR obligation presently pending before the Commission: Docket No. 060684-TP - In re: Complaint and petition for declaratory relief against BellSouth Telecommunications, Inc. for refusal to provide telephone service to a new development, by Litestream Holdings, LLC; Docket No. 060732-TL - In re: Complaint regarding BellSouth Telecommunications, Inc.'s failure to provide



## STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.

---

service on request in accordance with section 364.025(1), F.S., and Rule 25-4.091(1), F.A.C. by Lennar Homes, Inc.; and Docket No. 060763-TL - Petition by Embarq Florida, Inc. under section 364.025(6)(d), Florida Statutes, for relief from its carrier of last resort obligations.



# 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:** December 6, 2006  
**TO:** Christiana T. Moore, Office of the General Counsel  
**FROM:** Billy R. Dickens, Division of Economic Regulation **BRD** *KA* *W*  
**RE:** Statement of Estimated Regulatory Costs for Proposed Rule 25-4.084 *TSK*

---

## SUMMARY OF THE PROPOSED RULE

Rule 25-4.084, Florida Administrative Code, Carrier-of-Last Resort (COLR); Multitenant Business and Residential Property, is a proposed new rule created to fulfill the mandate of the Legislature provided in Section 364.025(6)(d), Florida Statutes, Universal Service. Rule 25-4.084 would codify what a local exchange telecommunications company, that is not automatically relieved of its carrier-of-last-resort obligation pursuant to Section 364.025(6)(d)1 through 4, F.S., must do to seek a waiver from the Commission. The rule specifies what information must be provided to the Commission in its petition.

## ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY

The proposed rule amendment requires compliance for all ten incumbent local exchange companies (ILEC) subject to COLR obligations operating in Florida.

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

The proposed rule would provide the procedure for obtaining a waiver of COLR obligations and the contents of the petition. Because the proposed rule only codifies the procedures an ILEC must follow to obtain a waiver, there is no enforcement cost or impact on revenues for the agency or other state and local governmental entities.

## ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

There should be minimal costs to the ILECs from filing a petition for COLR waiver provided there are no protests to the Proposed Agency Action Order.

IMPACT ON SMALL BUSINESSES, SMALL CITIES OR SMALL COUNTIES

Because the proposed rule specifies procedures that ILECs must follow, there should be no impact for small businesses, cities, and small county entities resulting from implementation of this rule.

BRD:kb

Cc: Mary Andrews Bane  
Charles Hill  
Ray Kennedy  
Hurd Reeves