

State of Florida



Public Service Commission

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COMMISSION
CLERK

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

DATE: September 22, 2011

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Cowdery) *tp*
Office of Auditing and Performance Analysis (Mailhot) *S.M.C.*
Division of Economic Regulation (McNulty) *em*
Division of Regulatory Analysis (Salak) *W.M.*
ms

RE: Docket No. 110224-TP – Proposed amendment of Rule 25-4.0161, F.A.C.,
Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 10/04/11 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Balbis

RULE STATUS: Section 364.336(2), F.S., requires that the reduced fee shall be applied beginning with payments due in January 2012 on revenues for the preceding 6-month period.

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\110224.RCM.DOC

Case Background

Section 364.336, F.S., is the statutory section which describes how regulatory assessment fees (RAFs) are set by the Commission for telecommunications companies. Subsection 364.336(2), F.S., was amended effective July 1, 2011, to require that rulemaking begin by August 1, 2011, to reduce the RAFs for telecommunications companies under Sections 350.113 and 364.336, F.S. This RAF reduction is required in order to reflect the regulatory reduction resulting from Chapter 364 amendments that took effect on July 1, 2011, pursuant to the Regulatory Reform Act enacted in the 2011 Legislative Session. Subsection 364.336(2) requires

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that the reduced fee shall be applied beginning with payments due in January 2012 on revenues for the preceding 6-month period. In addition, subparagraphs 364.336(2) (a) – (d) set forth factors which the Commission must consider in determining the required amount of the reduction to the RAF.

This docket was opened on July 15, 2011. Notice of Development of Rulemaking was published in the F.A.W. on July 29, 2011. A staff rule development workshop was held on August 22, 2011. Participating in the workshop were representatives from AT&T, Embarq Florida, Inc. d/b/a CenturyLink (CenturyLink), Florida Cable Telecommunications Association (FCTA), TW Telecom of Florida LP, and CompSouth. In addition, post-workshop written comments were submitted by FCTA and CenturyLink.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-4.0161, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), 350.113, 364.285, and 364.336, F.S.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies?

Recommendation: Yes, the Commission should propose the amendment of this rule as set forth in Attachment A. (Cowdery, Salak, Mailhot, McNulty)

Staff Analysis: Section 364.336(2), F.S., requires that rulemaking begin by August 1, 2011, to reduce the RAF for telecommunications companies under Sections 350.113 and 364.336, F.S. This RAF reduction is required in order to reflect the regulatory reduction resulting from Chapter 364 amendments that took effect on July 1, 2011, pursuant to the Regulatory Reform Act enacted in the 2011 Legislative Session. Subsection 364.336(2) requires that the reduced fee shall be applied beginning with payments due in January 2012 on revenues for the preceding 6-month period. In addition, Subsection 364.336(2) requires the Commission to consider the following factors in reducing the RAF for telecommunications companies:

- (a) The regulatory activities that are no longer required and the number of staff currently assigned to such activities.
- (b) The number of staff necessary to carry out the reduced level of regulatory responsibilities based on reductions in workload for the staff in the Division of Regulatory Analysis, the Office of Auditing and Performance Analysis, and the Division of Service, Safety and Consumer Assistance.
- (c) The reductions in overhead associated with the Commissioners' offices, the Office of General Counsel, the Office of Commission Clerk, the Office of Information Technology Services, the Office of Public Information, and the Office of Inspector General.
- (d) The reductions in direct and indirect costs, including allocations of fixed costs.

Below is staff's recommendation as well as a summary of the comments submitted by workshop participants on the draft rule amendments.

Staff Recommended Rule Amendments

In the recommended rule, a new Subsection 25-4.0161(1)¹ (p. 14) is created which, for purposes of the rule and except for pay telephone providers, defines "local telephone service providers" as all incumbent local exchange companies² (ILECs), shared tenant service providers,

¹ The recommended rule renumbers subsections (1) – (13) to (2) – (14), consistent with this change.

² A "local exchange telecommunications company" means any company certificated by the Commission to provide local exchange telecommunications service in this state on or before June 30, 1995. Subsection 364.02(8), F.S.

alternative access vendors, and competitive local exchange companies³ (CLECs) that hold an active certificate of public convenience and necessity that was obtained prior to July 1, 2011, and all telecommunications companies that obtain a certificate of authority after July 1, 2011. In addition, pay telephone companies are defined.

Staff notes that reference to interexchange telecommunications companies (IXCs) has been deleted from the rule because IXCs are no longer regulated by the Commission.⁴ The remaining company types, except pay telephone companies, fall within the category of local telephone service providers, and for this reason are defined as such in the recommended rule. Staff recommends that the Commission propose these amendments in recognition of statutory changes to the Commission's jurisdiction.

Subsection 25-4.0161(1) currently states that, as provided by statute, each company shall remit a fee based upon its gross operating revenue as provided therein. Six company types are listed: local exchange company (ILEC), pay telephone service provider, shared tenant service provider, IXC, alternative access vendor, and CLEC. Under the current rule, the minimum annual RAF to be imposed is \$100 for shared tenant service providers and pay telephone service providers, \$600 for alternative access vendors and CLECs, and \$1000 for ILECs. Subsection (1) further states that each company shall pay a RAF in the amount of 0.0020 of its gross operating revenues derived from intrastate business.

Renumbered Subsection 25-4.0161(2) (p. 14) of the recommended rule is amended to impose fees on "local telephone service providers" and "pay telephone service providers," consistent with the definitions contained in new Subsection (1). The recommended rule provides that the minimum annual RAF to be imposed on all local telephone service providers is \$600. Pursuant to Section 364.336, F.S., this minimum may be set as high as \$1000. The minimum annual RAF for pay telephone service providers remains \$100. Additionally, an obsolete reference to Subsection 364.02(12) is deleted from the rule language.⁵

Renumbered Subsection 25-4.0161(2) is further amended to provide that the RAF that each company is required to pay is 0.0016 of its gross operating revenues derived from intrastate business. To calculate the recommended RAF rate of 0.0016, staff has projected the cost of regulating the telecommunications industry based on the specific functions and activities required by statute. In addition, staff has also projected the revenue base of the telecommunications companies on which the RAF will be assessed. The regulatory assessment fee rate for telecommunications was last increased for fiscal year (FY) 2005/2006. The Commission's telecommunications expenses for that fiscal year were \$10.6 million. Staff is projecting \$3.9 million of telecommunications expenses for FY 2012/2013 for the purpose of setting the new RAF rate. This represents an approximately 63 percent decrease in expenses from FY 2005/2006. Since FY 2005/2006, the revenue base has declined by approximately 50

³ A "competitive local exchange telecommunications company" means any company certificated by the Commission to provide local exchange telecommunications service in this state on or after July 1, 1995. Subsection 364.02(5), F.S.

⁴ See Subsections 364.011(1) and 364.02(13)(g), F.S. (2011); also, Subsection 364.337(3) was repealed effective July 1, 2011.

⁵ CenturyLink agrees in its post-workshop comments that this reference to Subsection 364.02(12) should be deleted.

percent. This decline has accelerated in recent fiscal years. In the projection of revenues, staff has assumed that the decline will not accelerate further. If the decline is greater than staff has projected, then the RAF rate for telecommunications companies will not be adequate to cover the projected cost of regulation.

Current rule Subsection 25-4.0161(4) lists the six different RAF forms required to be filed by each of the six company types listed in the current rule. Renumbered Subsection 25-4.0161(5) (p. 16) is amended for clarity by adding the language from current Subsection 25-4.0161(7) that states that the failure of a telecommunications company to receive a return form shall not excuse the company from its obligations to timely remit the RAF. Renumbered Subsection 25-4.0161(5) is also amended to delete Forms PSC/RAD 34, PSC/RAD 153, PSC/RAD 1, and PSC/RAD 7, and instead incorporate by reference four forms consistent with the suggested amendments to renumbered Subsection (2). These four forms are as follows:

- Local Telephone Service Provider Regulatory Assessment Fee Return (p. 21). This form would be used by companies that pay RAFs that exceed \$10,000 for the entire year for 2011, and for all local telephone service providers beginning in 2012 and beyond. The companies that paid the first half of 2011 RAF were assessed a RAF percentage of 0.0020 and will only be required to pay an assessment percentage of 0.0016 for the second half of 2011. The form has been significantly simplified by following the Uniform Systems of Accounts and reducing the amount of detail required in the filing. This should result in the form taking less time to fill out.
- Interim Local Telephone Service provider Regulatory Assessment Fee Return (p. 23). This form will be used by companies that pay annually, i.e., the RAF payment for the year 2010 did not exceed \$10,000. The proposed RAF percentage assessed is an average of the RAF rate for the first half of the year (0.0020) and the second half of the year (0.0016) which results in a percentage assessment of 0.0018. This form will only be used for the 2011 RAF filings and will be obsolete thereafter.
- Pay Telephone Service Provider Regulatory Assessment Fee Return (p. 25). This form will reflect the new RAF percentage adopted by the Commission. Some minor corrections have been made to the form to eliminate confusion for filers that are required to calculate penalty and interest for late payment. Minor changes were also made to the back of the form to make the telecommunications RAF forms consistent with other industries' RAF forms (water, electric, etc.).
- Interim Pay Telephone Service Provider Regulatory Assessment Fee Return (p. 27). This form will be used by companies that pay annually, i.e., the RAF payment for the year 2010 did not exceed \$10,000. The proposed RAF percentage assessed is an average of the RAF rate for the first half of the year (0.0020) and the second half of the year (0.0016) which results in a percentage assessment of 0.0018. This form will only be used for the 2011 RAF filings and will be obsolete thereafter.

Staff is recommending these changes to the forms in order to be consistent with suggested amendments discussed in this recommendation. In addition, it is recommended that

current Subsection 25-4.0161(7) should be amended to delete language which allows for an automatic grant of an extension. Staff is recommending that the Commission amend the rule in this respect because Subsection 350.113(5), F.S., requires a written request showing good cause for the extension request. The above-named forms would require a written request showing good cause for the extension request, consistent with Subsection 350.113(5), F.S.

Current Subsection 25-4.0161(7) sets forth the requirements for a company to request an extension of its RAF payment due date or for filing its return form. The subsection currently provides that a company may request a 30-day extension of its due date, and that the request will be granted as long as it has been timely filed and there are no outstanding RAFs, penalties, or interest due from a prior year. Renumbered Subsection 25-4.0161(8) (p. 17) is amended to state that companies may request either a 15-day or a 30-day extension. In addition, the automatic granting of the request for extension is eliminated in order to comply with Subsection 350.113(5), F.S., which provides that the Commission may grant such an extension for good cause shown. Form PSC /ADM 124 (p. 29), Regulatory Assessment Fee Extension Request, is amended to require a statement of good cause for an extension request. Staff notes that the elimination of the automatic extension request applies to all RAF forms proposed in this rulemaking proceeding. Renumbered Subsection 25-4.0161(8) is also rewritten for clarity purposes. For these reasons, staff recommends that the Commission propose the amendments to renumbered Subsection (8) of the rule as set forth in the recommended rule.

Current Subsections 25-4.0161(10) and (11) address the procedure to be followed if a company fails to pay its RAF within 15 days after receiving a delinquency notice and gives the penalties to be imposed for violations by a company of a Commission rule, order, or Florida statute. Current Subsection (11) provides for penalties for failure to file a RAF return by the delinquency notice return date for first, second, and third violations. Current Subsection (12) provides that for a company's fourth failure to pay the RAF after being sent a delinquency notice, Commission staff shall file a recommendation to the Commission for further action. Current Subsection (13) addresses, in part, a company's payment of any outstanding penalties before refiling for certification or registration.

Renumbered recommended rule Subsections 25-4.0161(11), (12), (13) and (14) (pp. 18 – 20) delete references to "registration" as obsolete, and, instead reference certification, in order to be consistent with changes to statutory language. Renumbered Subsection (11) is changed to state that a docket will be opened and administrative action taken as set forth in the rule if a company fails to pay the RAF within 20 days after receiving a delinquency notice, rather than after 15 days. Staff is recommending this change because staff's analysis of payments over the last five years shows that a twenty day window for payment will be more cost effective for the Commission, as it will capture most companies' payments and minimize the expense of establishing a docket and preparing administrative orders. For the above reasons, Staff recommends that the Commission propose staff's suggested amendments to these rule subsections.

Statutory Factors

As stated above, Subsection 364.336(2), F.S., requires that the Commission consider four specific factors when determining the required amount of the reduction to the RAF. These factors and staff's analysis of each follows.

- (a) The regulatory activities that are no longer required and the number of staff currently assigned to such activities.

The Regulatory Reform Act reduces the Commission's jurisdiction over retail telecommunications service. In light of the enactment of the Regulatory Reform Act, the Commission contracted with the National Regulatory Research Institute to prepare a report (NRRI Report)⁶ assessing the organizational structure and work flow processes necessary to implement the statutory changes. As set forth in the report:

The Reform Act removes the [C]ommission's limited jurisdiction over interexchange (long-distance) providers, wireless Eligible Telecommunications providers (ETCs), and operator service providers. It revises the definition of telecommunications companies to remove operator services providers, and revises the list of services exempted from oversight to include all retail wireline Time Division Multiplexed (TDM) offerings, as well as retail bundled services and service provided via internet protocol. The Reform Act also eliminates the [C]ommission's authority to oversee quality of service for its retail customers and virtually eliminates its responsibility for adjudicating individual customer complaints.⁷ [footnotes not included.]

The NRRI Report also notes that the law eliminates the requirement that providers file tariffs with the Commission for anything other than access services.⁸

At the end of FY 2010/2011, the Commission reduced the number of telecommunications staff by 12 full-time equivalent positions (FTEs). This reduction of 12 FTEs results from the regulatory activities that are no longer required and the number of staff previously assigned to such activities.

- (b) The number of staff necessary to carry out the reduced level of regulatory responsibilities based on reductions in workload for the staff in the Division of Regulatory Analysis, the Office Auditing and Performance Analysis, and the Division of Service, Safety and Consumer Assistance.

The NRRI Report states that the Commission retains jurisdiction over wholesale, or carrier-to-carrier, disputes. As set forth in the report:

⁶ National Regulatory Research Institute, Final Report, Assessing the Structure and Cost of the Florida Public Service Commission Telecommunications Department, August 31, 2011, Sherry Lichtenberg, Ph.D.

⁷ NRRI Report, p. 5.

⁸ Id.

The [C]ommission will continue to manage unbundling and the resale of telecommunications services, certify CLECs, arbitrate and enforce interconnection agreements, respond to complaints among carriers (including slamming complaints brought by carriers on behalf of their customers), and manage wholesale quality-of-service metrics. Staff will also continue to prepare the annual competition report. . . . Interconnection agreement arbitration and complaint adjudication remain key focuses for the staff of the Regulatory Analysis Division, as do monitoring potential FCC actions to ascertain their impact on Floridians, managing numbering filings and reclamation activities, and reviewing ILEC Operational Support System (OSS) change-management announcements to identify potential issues and disputes.⁹ [footnote omitted.]

The NRRI Report also points out that the Commission still has many duties and functions related to the regulation of telecommunications companies. The report states:

In the retail area, [C]ommission staff will continue to designate wireline ETC's, issue certificates for wireline companies operating in Florida, oversee payphones (although the market for this product is declining significantly). Staff will also oversee and manage the Telecommunications Relay Service (TRS) process for the deaf, hard of hearing, and speech impaired, including testing the service to ensure that the provider meets contract requirements for speed of answer and accuracy. . . .

In addition, the staff will retain its responsibility for reviewing and resolving customer issues regarding Lifeline, and for assessing and collecting the Commission's RAF for certified carriers. The staff will continue to interface with the FCC in the National Association of State Regulatory Utility Commissioners and other bodies, and will remain responsible for keeping the Commissioners up to date on Federal activities, drafting comments on pending rules, and reviewing and providing input on issues that will affect Florida companies and consumers. The staff will continue its limited participation in the broadband adoption efforts sponsored by the Division of Management Services and may also continue to support Lifeline outreach.¹⁰

It is important to recognize that there has been a steady decrease in telecommunications workload since FY 2005/2006 due to legislative changes and changes in the marketplace. Over this time period, staff assigned to telecommunications regulation has decreased as the workload decreased. FCTA correctly points out that much of the retail deregulation occurred prior to 2011 and is reflected in the steady decrease in positions and costs in prior years. Most of the staff that works on telecommunications matters were reorganized and consolidated into two sections within the Division of Regulatory Analysis.

⁹ NRRI Report, p. 8

¹⁰ NRRI Report, pp. 5 - 6

Staff believes that the Commission currently has the appropriate number of staff necessary to carry out the reduced level of regulatory responsibilities. As stated in the Commission management's comments on the NRRI Report:

The Commission has been seeking cost savings and efforts to streamline regulatory processes for at least 12 years. The origin of these streamlining efforts is not limited to the emergence and evolution of competition in the telecommunications industry. In fiscal year 1999/2000, the Commission had 401 full time equivalent (FTEs) positions and that number has been reduced to 296 in the 2011/2012 fiscal year, a reduction of 26.2 percent. The Commission continues to seek ways to economize its resources while maintaining a high quality work product for essential functions.¹¹

Staff agrees with the conclusion of the NRRI Report that the telecommunications group is sized correctly for current workload.¹² As is routinely done, staff will continue to monitor the level of telecommunications workload to determine if the staffing level is appropriate.¹³

- (c) The reductions in overhead associated with the [C]ommissioners' offices, the Office of General Counsel, the Office of Commission Clerk, the Office of Information Technology Services, the Office of Public Information, and the Office of Inspector General.

For internal Commission purposes, overhead hours¹⁴ are allocated to telecommunications regulation based on the direct hours of regulating telecommunications as determined in section (b). Therefore, as the number of direct hours recorded for regulating telecommunications decrease, the associated overhead hours will decrease. This decrease is included in staff's proposed reduction to the RAF.

- (d) The reductions in direct and indirect costs, including allocations of fixed costs.

For internal Commission purposes, direct and indirect costs and the allocation of fixed costs are allocated to telecommunications regulation based on the direct hours of regulating telecommunications as determined in section (b). Therefore, as the number of direct hours recorded for regulating telecommunications decrease, the direct and indirect costs and allocation of fixed costs will decrease. This decrease is included in staff's proposed reduction to the RAF rate.

¹¹ NRRI Report, p. 28

¹² NRRI Report, p. 23

¹³ The NRRI Report suggests three reductions in the future, but is based on events that have not happened yet.

¹⁴ Overhead hours include the Office of Commission Clerk, the Office of Information Technology Services, the Division of Administrative Services, the Inspector General and the General Counsel. The Commissioners' offices, the Office of General Counsel, not including the General Counsel, and the Office of Public Information are included in the direct hours identified in section (b).

Workshop Participant Comments

FCTA, whose six largest members are Atlantic Broadband, Advanced Cable, Bright House Networks, Comcast, Cox, and Mediacom, represents cable telephony providers throughout the state of Florida who provide, by and large, the only facilities-based mass market telephony competition to Florida's ILECs. FCTA states in its post-workshop comments that staff's recommended RAF percentage of 0.0016 should be adopted by the Commission because it strikes the right balance between consideration of the reduction in the Commission's regulatory functions related to retail service, as required by Section 364.336, F.S., and the need to provide sufficient resources for the Commission's invaluable oversight of intercarrier disputes, as required by Section 364.16, F.S.

FCTA emphasizes that the Commission's oversight of intercarrier disputes has assisted in the dramatic growth in cable telephony subscribership over the past decade. FCTA states that Federal law establishes the Commission as the primary forum for intercarrier competitive disputes¹⁵ and that the Commission, which possesses institutional and subject matter expertise, routinely resolves disputes much more quickly than the Federal Communications Commission or a federal court. It notes that along with deregulating ILEC and CLEC retail service in 2011, the Legislature retained and emphasized the Commission's "continued role" as an overseer and arbiter of disputes between carriers.¹⁶ FCTA concludes that the Commission's main role is to ensure a level playing field between competitors, so that the resulting competition can police both service quality and price. FCTA believes that as cable telephony expands into the business market, additional intercarrier disputes will arise, and that wholesale disputes and interconnection matters, due to their complexity, require a larger share of Commission resources than did retail matters.

FCTA points out that as a result of substantial deregulation of ILEC service in 2008, the Commission already had a small role in direct regulation of retail service. It states that even before the deregulation resulting from the Consumer Choice Act of 2009,¹⁷ the Commission rarely entertained retail regulation proceedings and that much of the Commission's workload from 2008 to present, apart from intercarrier disputes, has involved proceedings to remove outdated retail pricing and service quality rules. It notes that staff's proposed FY 2012/2013 budget of \$3.89 million, after excluding state mandated service and trust fund charges, based on a 0.0016 RAF rate, reflects a nearly 50 percent decrease from 2005,¹⁸ when the Commission still engaged in proceedings such as carrier-of-last-resort (COLR) and direct retail regulation, and a substantial reduction from 2010, when the Commission's telecommunication workload already consisted primarily of intercarrier matters. Further, FCTA notes that the proposed 0.0016 RAF rate represents a decrease in the RAF percentage of 20 percent from the prior year, when the Commission's workload already contained primarily intercarrier dispute matters. FCTA believes the budget correctly provides for the Commission's current role in resolving intercarrier disputes

¹⁵ 47 U.S.C. §§ 251-252.

¹⁶ Subsection 364.16(1), F.S.

¹⁷ SB 2626.

¹⁸ As previously noted in this recommendation, the actual decrease from FY 2005/2006 to FY 2012/2013 is approximately 63 percent.

and its other statutory duties, which include numbering administration, Lifeline, and the annual Competition Report to the Legislature.

At the August 22, 2011 staff rule development workshop, CompSouth, a compilation of CLECs, expressed the concern that the Commission, in setting the reduced RAF rate, retain sufficient resources, assets, and ability to oversee wholesale transactions. To the extent that disputes arise between CLECs and ILECs, the Commission should have sufficient funds to administer and promptly and judiciously resolve such disputes, as historically has been the case.

In its post-workshop written comments, CenturyLink states that the information provided to the workshop participants was insufficient for it to evaluate whether the staff reductions and continued expenditures reflect the reduction in regulation resulting from the 2011 amendments to Chapter 364, F.S. CenturyLink also states that the proposed structure of the RAF, where CLECs likely will comprise the majority of companies subject to the minimum fee of \$600, while ILECs will continue to pay revenue-based fees that are many multiples higher than the minimum, does not reflect the new regulatory reality brought about by the 2011 legislation where the Commission's primary focus will be on wholesale relationships. CenturyLink recognizes that this rulemaking is largely based on expectations, rather than actualities, and that experience under the new deregulatory regime will provide more concrete guidance as to the level of expenditures associated with carrying out the Commission's continuing regulatory authority. CenturyLink expects that over time the Commission will continue to re-evaluate the expenditures necessary to fulfill its regulatory responsibilities for telecommunications companies and the appropriate level of the fee to reflect that responsibility.

CenturyLink makes three additional points in its post-workshop comments. First, CenturyLink notes that CLECs likely will comprise the majority of companies subject to the minimum fee of \$600. CenturyLink's second point is that although most CLECs will pay the minimum RAF fee of \$600, ILECs will continue to pay revenue-based fees. Staff agrees with the essential substance of these two points, except to emphasize that the recommended rule does not distinguish between CLECs and ILECs. CenturyLink itself agrees in its comments that "staff appropriately reflects the intent of the 2011 legislation to eliminate the regulatory distinctions among 'local service providers' by collapsing the various categories of local providers reflected in the current rule into one." Thus, pursuant to the recommended rule, each company is required to pay a revenue based RAF in the amount of 0.0016 of its gross operating revenues, as set forth by statute, but, regardless of the gross operating revenue of a local telephone service provider, a minimum annual RAF of \$600 shall be imposed. Rule 25-4.0161 sets a revenue based RAF, as required by Subsection 364.336(1), F.S.

CenturyLink's third point is that "the proposed rate structure does not reflect the new regulatory reality brought about by the 2011 legislation where the Commission's primary focus will be on wholesale relationships." Notwithstanding other changes to Chapter 364 as a result of the 2011 Legislative session, the Commission is still required by Subsection 364.336(1), F.S., to set a revenue based RAF and a minimum annual fee. For this reason, staff believes that the recommended rule is consistent with current statutory requirements.

Statement of Estimated Regulatory Cost (SERC)

The SERC (Attachment B) includes an economic analysis as required by Subparagraph 120.541(2)(a)1, F.S. The SERC's economic analysis concludes that the recommended rule amendments are not likely to: a) have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; b) have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or c) increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Based upon this conclusion, staff believes that there are no adverse impacts or regulatory costs exceeding any of the Subparagraph 120.541(2)(a) criteria, and therefore the rule does not need to be submitted to the Legislature for ratification.

Subparagraph 120.541(2)(b) requires a good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the type of individuals anticipated to be affected by the rule. The SERC identifies these entities as ten ILECs, 25 alternative access vendors, 298 CLECs, 106 pay telephone providers, and 20 shared tenant service providers. The SERC also states that staff believes that the impact of the RAF reduction on customers will be de minimus.

Subparagraph 120.541(2)(c) requires a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues. The SERC concludes that Commission implementation and enforcement costs are primarily fixed costs that are expected to remain at approximately the same levels as they have been in the past. The impact on state revenues is expected to be a decrease of \$1,185,115 in the first year of rule implementation, based on the latest estimated gross intrastate revenues for 2012/2013. The impact on local government revenue is expected to be de minimus.

Subparagraph 120.541(2)(d) requires a good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the rule requirements. The SERC states that, under the recommended rule, telecommunication companies that choose to revise customer rates based on the revised RAF rates would have some minor expense associated with implementing the rate changes. Staff believes that the impact of the fee reduction on customers will be de minimus.

Subparagraph 120.541(2)(e) requires an analysis of the impact of the rule change on small businesses, small counties and small cities. Staff believes that the impact of the proposed RAF changes on small businesses, small counties, and small cities will be de minimus.

Based upon the above, staff recommends that the Commission propose the adoption of the amendments to Rule 25-4.0161, F.A.C., as set forth in Attachment A.

Docket No. 110224-TP
Date: September 22, 2011

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule may be filed with the Department of State, and then this docket may be closed. (Cowdery)

Staff Analysis: If no requests for hearing or comments are filed, the rule may be filed with the Department of State, and then this docket may be closed. In the event a hearing is requested, a rule hearing will be held on Tuesday afternoon, November 22, 2011. If a hearing is not requested, this hearing date will be canceled.

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

2 (1) For the purposes of this rule and except for pay telephone service providers, all incumbent
3 local exchange companies, shared tenant service providers, alternative access vendors, and
4 competitive local exchange companies that hold an active certificate of public convenience and
5 necessity that was obtained prior to July 1, 2011, and all telecommunications companies that
6 hold an active certificate of authority obtained after July 1, 2011, are defined as local telephone
7 service providers. Companies classified as pay telephone service providers are those
8 companies that hold an active pay telephone certificate of public convenience and necessity
9 that was obtained prior to July 1, 2011, and those companies that hold an active pay telephone
10 certificate of authority obtained after July 1, 2011.

11 (2) (a) (4) For the interim period January 1, 2011 through December 31, 2011, as applicable
12 and as provided in Sections 350.113 and 364.336, F.S., each company shall remit a fee based
13 upon its gross operating revenue as provided below. Each company that has paid by August 15,
14 2011, regulatory assessment fees for the period January 1, 2011 through June 30, 2011, shall
15 pay a regulatory assessment fee in the amount of 0.0016 of its gross operating revenues derived
16 from intrastate business during the period July 1, 2011 through December 31, 2011. Each
17 company that has not paid any regulatory assessment fees for the period January 1, 2011
18 through December 31, 2011, shall pay a regulatory assessment fee in the amount of 0.0018 of
19 its gross operating revenues derived from intrastate business. The minimum regulatory
20 assessment fees provided in subsection (2) (b) shall apply and shall be filed in accordance with
21 the schedules provided in subsections (3) and (4). For the purpose of determining this fee, each
22 telecommunications company shall deduct from gross operating revenues any amount paid to

23
24 CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from
25 existing law.

1 another telecommunications company for the use of any telecommunications network to
2 provide service to its customers.
3 (b) Effective January 1, 2012, as As applicable and as provided in Sections 350.113,
4 ~~364.02 (12) 364.02(13)~~ and 364.336, F.S., each company shall remit a fee based upon its gross
5 operating revenue as provided below. This fee shall be referred to as a regulatory assessment
6 fee, and each company shall pay a regulatory assessment fee in the amount of 0.0016 ~~0.0020~~ of
7 its gross operating revenues derived from intrastate business. For the purpose of determining
8 this fee, each telecommunications company shall deduct from gross operating revenues any
9 amount paid to another telecommunications company for the use of any telecommunications
10 network to provide service to its customers. Regardless of the gross operating revenue of a
11 company, a minimum annual regulatory assessment fee shall be imposed as follows:

- 12 1. ~~(a) Local Telephone Service Provider Exchange Company~~ – ~~\$600~~ \$1,000; and
- 13 2. ~~(b) Pay Telephone Service Provider~~ – \$100;
- 14 ~~(c) Shared Tenant Service Provider~~ – \$100;
- 15 ~~(d) Interexchange Company~~ – \$700;
- 16 ~~(e) Alternative Access Vendor~~ – \$600;
- 17 ~~(f) Competitive Local Exchange Company~~ – \$600.

18 (3) ~~(2)~~ Telecommunications companies that owed gross regulatory assessment fees of \$10,000
19 or more for the preceding calendar year shall pay the fee and remit the appropriate form twice a
20 year. The regulatory assessment fee and appropriate form shall be filed no later than July 30 for
21 the preceding period of January 1 through June 30, and no later than January 30 of the
22 following year for the period of July 1 through December 31. Telecommunications companies
23 that owed gross regulatory assessment fees of less than \$10,000 for the preceding calendar year

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

1 shall pay the fee and remit the appropriate form once a year. The regulatory assessment fee and
2 appropriate form shall be filed no later than January 30 of the subsequent year for the current
3 calendar year operations.

4 ~~(4)~~ (3) If the due date falls on a Saturday, Sunday, or legal holiday, the due date is extended to
5 the next business day. If the fees are sent by registered mail, the date of the registration is the
6 United States Postal Service's postmark date. If the fees are sent by certified mail and the
7 receipt is postmarked by a postal employee, the date on the receipt is the United States Postal
8 Service's postmark date. The postmarked certified mail receipt is evidence that the fees were
9 delivered. Regulatory assessment fees are considered paid on the date they are postmarked by
10 the United States Postal Service or received and logged in by the Commission's Division of
11 Administration Services in Tallahassee. Fees are considered timely paid if properly addressed,
12 with sufficient postage, and postmarked no later than the due date.

13 ~~(5)~~ (4) Commission Form PSC/RAD XX (XX/XX) PSC/RAD-25 (04/07), entitled "Local
14 Telephone Service Provider Exchange Company Regulatory Assessment Fee Return," is
15 available at [link]; Form PSC/RAD XX (XX/XX), entitled "Interim Local Telephone Service
16 Provider Regulatory Assessment Fee Return," is available at [link]; Form PSC/RAD 26
17 (XX/XX) (04/07), entitled "Pay Telephone Service Provider Regulatory Assessment Fee
18 Return," is available at [link]; and Form PSC/RAD XX(XX/XX) (04/07), entitled "Interim Pay
19 Telephone Service Provider Regulatory Assessment Fee Return," is available at [link]. ; ~~Form~~
20 ~~PSC/RAD 34 (04/07), entitled "Shared Tenant Service Provider Regulatory Assessment Fee~~
21 ~~Return"; Form PSC/RAD 153 (04/07), entitled "Interexchange Company Regulatory~~
22 ~~Assessment Fee Return"; Form PSC/RAD 1 (04/07), entitled "Alternative Access Vendor~~
23 ~~Regulatory Assessment Fee Return"; and Form PSC/RAD 7 (04/07), entitled "Competitive~~

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25 existing law.

1 ~~Local Exchange Company Regulatory Assessment Fee Return~~” These forms are incorporated
2 into this rule by reference and may also be obtained from the Commission’s Division of
3 Administrative Services. The failure of a telecommunications company to receive a return
4 form shall not excuse the company from its obligation to timely remit the regulatory assessment
5 fees.

6 ~~(6)~~ ~~(5)~~ Each telecommunications company shall have up to and including the due date in which
7 to submit the applicable form and:

- 8 (a) Remit the total amount of its fee, or
9 (b) Remit an amount which the company estimates is its full fee.

10 ~~(7)~~ ~~(6)~~ Where the company remits less than its full fee, the remainder of the full fee shall be due
11 on or before the 30th day from the due date and shall, where the amount remitted was less than
12 90 percent of the total regulatory assessment fee, include interest as provided by subsection
13 ~~(9)(b)~~ paragraph (8)(b) of this rule.

14 ~~(8)~~ ~~(7)~~ A company may request ~~from the Division of Administrative Services~~ either a 15-day or
15 a 30-day extension of its due date for payment of regulatory assessment fees or for filing its
16 return form by submitting to the Division of Administrative Services Commission Form
17 PSC/ADM 124 (XX/XX) entitled “Regulatory Assessment Fee Extension Request,” which is
18 incorporated into this rule by reference and is available at [link]. This form may also be
19 obtained from the Commission’s Division of Administrative Services.

20 (a) The request for extension must be received by the Division of Administrative Services at
21 least two weeks before the due date. ~~The request for extension must be submitted on Form~~
22 ~~PSC/ADM 124 (01/05) and will be granted if the company has applied for the extension within~~
23 ~~the time required in paragraph (b) below and the company does not have any unpaid regulatory~~

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25 existing law.

1 ~~assessment fees, penalties or interest due from a prior year. Form PSC/ADM 124 (01/05),~~
2 ~~entitled "Regulatory Assessment Fee Extension Request" is incorporated into this rule by~~
3 ~~reference and may be obtained from the Commission's Division of Administrative Services.~~

4 (b) The request for extension will not be granted if the company has any unpaid regulatory
5 assessment fees, penalties, or interest due from a prior period. The request for extension must
6 ~~be received by the Division of Administrative Services at least two weeks before the due date.~~

7 (c) Where a telecommunications company receives an extension of its due date pursuant to this
8 rule, the telecommunications company shall remit a charge as set out in Section 350.113(5),
9 F.S., in addition to the regulatory assessment fees, ~~as set out in Section 350.113(5), F.S.~~

10 ~~(d) The return forms may be obtained from the Commission's Division of Administrative~~
11 ~~Services. The failure of a telecommunications company to receive a return form shall not~~
12 ~~excuse the company from its obligation to timely remit the regulatory assessment fees.~~

13 (9) (8) The delinquency of any amount due to the Commission from the telecommunications
14 company pursuant to the provisions of Section 350.113, F.S., and this rule, begins with the first
15 calendar day after any date established as the due date either by operation of this rule or by an
16 extension pursuant to this rule.

17 (a) A penalty, as set out in Section 350.113, F.S., shall apply to any such delinquent amounts.

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

19 (10) (9) The Division of Administrative Services shall send by certified mail a regulatory
20 assessment fee delinquency notice to any company that fails to file a regulatory assessment fee
21 return and that fails to pay the regulatory assessment fee by the date specified in subsection (3)
22 (2), unless the company has met the requirements of subsections (7) (6) and (8) (7).

23 (11) (10) If a company fails to pay the regulatory assessment fee within 20 ~~15~~ days after

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25 existing law.

1 receiving a delinquency notice, the Division of Administrative Services, in cooperation with the
2 Division of Regulatory Analysis and the Office of General Counsel, will establish a docket and
3 administratively issue a Notice of Proposed Agency Action Order Imposing Penalties and
4 Collection Costs, and Requiring Payment of Delinquent Regulatory Assessment Fees, or
5 Cancelling Certificates ~~or Removing From the Register~~ for Violation of Rule 25-4.0161,
6 F.A.C., and Section 364.336, F.S. The company must pay the past due regulatory assessment
7 fees, the penalty and interest for late payment as provided in Section 350.113, F.S., and as
8 stated in subsection (9) ~~(8)~~ above, and must also pay the applicable penalty stated in subsection
9 (12) ~~(11)~~ for failure to file the regulatory assessment fee return.

10 (12) ~~(11)~~ Pursuant to Section 364.285, F.S., the Commission has the authority to impose a
11 penalty or cancel a certificate ~~or registration~~ if a company refuses to comply with Commission
12 rules, orders, or Florida Statutes. The penalty, which will include collection costs, for failure to
13 file the regulatory assessment fee return by the date stated in the delinquency notice shall be as
14 follows:

- 15 (a) First violation – \$500;
- 16 (b) Second violation – \$1,000;
- 17 (c) Third violation – \$2,000.

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

22 (13) ~~(12)~~ For a company's fourth failure to pay the regulatory assessment fee after being sent a
23 delinquency notice, Commission staff shall file a recommendation to the Commission for

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25 existing law.

1 further action.

2 ~~(14) (13)~~ A company that reapplies for a Certificate of Authority ~~Public Convenience and~~
3 ~~Necessity, or refiles for registration,~~ must pay all prior unpaid regulatory assessment fees, plus
4 the penalty and interest defined in subsection (9) ~~(8)~~, and any prior unpaid penalty assessed in
5 accordance with subsection (11) ~~(10)~~.

6 Rulemaking Authority 350.127(2) FS. Law Implemented 350.113, 364.285, 364.336 FS.

7 History—New 5-18-83, Formerly 25-4.161, Amended 10-19-86, 1-1-91, 12-29-91, 1-8-95, 12-
8 26-95, 7-7-96, 11-11-99, 12-7-04, 10-6-05, 4-16-07, xx-xx-xx.

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

FLORIDA PUBLIC SERVICE COMMISSION
Instructions For Filing Regulatory Assessment Fee Return
(Telecommunications Company)

1. **WHEN TO FILE:** For companies which owed a total of \$10,000 or more of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return is required twice a year and payment must be filed or postmarked:

On or before July 30 for the six-month period January 1 through June 30, **and**
On or before January 30 for the six-month period July 1 through December 31.

For companies which owed a total of less than \$10,000 of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return and payment must be filed or postmarked:

On or before January 30 for the prior twelve-month period January 1 through December 31.

However, when July 30 or January 30 falls on a Saturday, Sunday, or holiday, the Regulatory Assessment Fee Return may be filed or postmarked on the next business day, without penalty or interest.

2. **FEES:** Each company shall pay 0.0016 of its gross operating revenues derived from intrastate business, as referenced in Rule 25-4.0161(2)(a), F.A.C., for 2011 and as referenced in Rule 25-4.0161(2)(b), F.A.C., for 2012 and beyond. Gross Operating Revenues are defined as the total revenues before expenses. Gross Intrastate Operating Revenues are defined as revenues from calls originating and terminating within Florida. Do not deduct any expenses, taxes, or uncollectibles from these amounts.

On Line 6, deduct any amounts paid to another telecommunications company for the use of any telecommunications network to provide service to its customers. ***Do not deduct any taxes, federal subscriber line charges, interstate long distance access charges, or amounts paid for nonregulated services such as voice mail, inside wire maintenance, or equipment purchases/rentals.*** **DEDUCTIONS MUST BE INTRASTATE ONLY AND MUST BE VERIFIABLE.**

3. **FAILURE TO FILE BY DUE DATE:** Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 9). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total of 12% per year (Line 10). A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due.

When a company fails to timely file a Regulatory Assessment Fee Return, the Commission has the authority to order the company to pay a penalty and/or cancel the company's certificate. The company will have an opportunity to respond to any proposed Commission action.

4. **EXTENSION:** A company, for good cause shown in a written request, may be granted up to a 30-day extension. A request must be made by filing the enclosed *Regulatory Assessment Fee Extension Request* form (PSC/ADM 124), two weeks prior to the filing date. When an extension is granted, a charge shall be added to the amount due (Line 11):

0.75% of the fee to be remitted for an extension of 15 days or less, *or*
1.5% of the fee for an extension of 16 to 30 days.

In lieu of paying the charges outlined above, a company may file a return and remit payment based upon estimated gross operating revenues by checking the "Estimated Return" space in the top left-hand corner on the reverse side. If such return is filed by the normal due date, the company shall be granted a 30-day extension period in which to file and remit the actual fee due without paying the above charges, provided the estimated fee payment remitted is at least 90% of the actual fee due for the period.

5. **FEE ADJUSTMENTS:** You will be notified as to the amount and reason for any fee adjustment. Penalty and interest charges may be applicable to additional amounts owed the Commission by reason of the adjustment. The company may file a written request for a refund of any overpayments. The request should be directed to Fiscal Services at the below-referenced address.
6. **MAILING INSTRUCTIONS:** Please complete this form, make a copy for your files, and return the original in the enclosed preaddressed envelope. Use of this envelope should assure a more accurate and expeditious recording of your payment. **Make your check payable to the Florida Public Service Commission.** If you are unable to use the enclosed envelope, please address your remittance as follows:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ATTENTION: Fiscal Services

7. **ADDITIONAL ASSISTANCE:** If you need additional assistance in preparing your Regulatory Assessment Fee Return or regarding telecommunications facilities, please contact the Division of Regulatory Analysis at (850) 413-6600. This division may be contacted at the above-referenced address, directing correspondence to the attention of the division.

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE
Interim Local Telephone Service Provider Regulatory Assessment Fee Return
Used for Calendar Year 2011 Only

Florida Public Service Commission

STATUS:

- Actual Return
- Estimated Return
- Amended Return

PERIOD COVERED:

(See Filing Instructions on Back of Form)

Please Complete Below If Official Mailing Address Has Changed

FOR PSC USE ONLY

Check # _____

\$ _____ 06-03-001
 _____ 003001

\$ _____ E

\$ _____ P 06-03-001
 _____ 004011

\$ _____ I

Postmark Date _____

Initials of Preparer _____

 (Name of Company) (Address) (City/State) (Zip)

LINE NO.		TOTAL FLORIDA GROSS OPERATING REVENUE	INTRASTATE REVENUE
1.	Local Service Revenues	\$ _____	\$ _____
2.	Network Access Revenues	_____	_____
3.	Long Distance Network Services Revenues	_____	_____
4.	Miscellaneous Revenues	_____	_____
5.	TOTAL REVENUES	\$ _____	\$ _____
6.	LESS: Amounts Paid to Other Telecommunications Companies ⁽¹⁾	_____	_____
7.	NET INTRASTATE OPERATING REVENUE for Regulatory Assessment Fee Calculation (Line 5 less Line 6)	_____	\$ _____
8.	Regulatory Assessment Fee Due (Multiply Line 7 by 0.0018. If more than \$600, enter amount. If less, enter \$600.) ⁽²⁾	_____	_____
9.	Penalty for Late Payment (see "3. Failure to File by Due Date" on back)	_____	_____
10.	Interest for Late Payment (see "3. Failure to File by Due Date" on back)	_____	_____
11.	Extension Payment Fee (see "4. Extension " on back)	_____	_____
12.	TOTAL AMOUNT DUE (Add lines 8 through 11)	_____	\$ _____

(1) These amounts must be intrastate only and must be verifiable (see "2. Fees" on back).

(2) Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee of \$600 shall be imposed as provided in Section 364.336, Florida Statutes.

I, the undersigned owner/officer of the above-named company, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

 (Signature of Company Official) (Title) (Date)

 Telephone Number () Fax Number ()

(Preparer of Form - Please Print Name)

F.E.I. No. _____

FLORIDA PUBLIC SERVICE COMMISSION
Instructions For Filing Regulatory Assessment Fee Return
(Telecommunications Company)

1. **WHEN TO FILE:** For companies which owed a total of \$10,000 or more of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return is required twice a year and payment must be filed or postmarked:

*On or before July 30 for the six-month period January 1 through June 30, **and**
On or before January 30 for the six-month period July 1 through December 31.*

For companies which owed a total of less than \$10,000 of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return and payment must be filed or postmarked:

On or before January 30 for the prior twelve-month period January 1 through December 31.

However, when July 30 or January 30 falls on a Saturday, Sunday, or holiday, the Regulatory Assessment Fee Return may be filed or postmarked on the next business day, without penalty or interest.

2. **FEES:** Each company shall pay 0.0018 of its gross operating revenues derived from intrastate business, as referenced in Rule 25-4.0161(2)(a), F.A.C. Gross Operating Revenues are defined as the total revenues before expenses. Gross Intrastate Operating Revenues are defined as revenues from calls originating and terminating within Florida. Do not deduct any expenses, taxes, or uncollectibles from these amounts.

On Line 6, deduct any amounts paid to another telecommunications company for the use of any telecommunications network to provide service to its customers. **Do not deduct** any taxes, federal subscriber line charges, interstate long distance access charges, or amounts paid for nonregulated services such as voice mail, inside wire maintenance, or equipment purchases/rentals. **DEDUCTIONS MUST BE INTRASTATE ONLY AND MUST BE VERIFIABLE.**

3. **FAILURE TO FILE BY DUE DATE:** Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 9). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total of 12% per year (Line 10). A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due.

When a company fails to timely file a Regulatory Assessment Fee Return, the Commission has the authority to order the company to pay a penalty and/or cancel the company's certificate. The company will have an opportunity to respond to any proposed Commission action.

4. **EXTENSION:** A company, for good cause shown in a written request, may be granted up to a 30-day extension. A request must be made by filing the enclosed *Regulatory Assessment Fee Extension Request* form (PSC/ADM 124), two weeks prior to the filing date. When an extension is granted, a charge shall be added to the amount due (Line 11):

0.75% of the fee to be remitted for an extension of 15 days or less, or
1.5% of the fee for an extension of 16 to 30 days.

In lieu of paying the charges outlined above, a company may file a return and remit payment based upon estimated gross operating revenues by checking the "Estimated Return" space in the top left-hand corner on the reverse side. If such return is filed by the normal due date, the company shall be granted a 30-day extension period in which to file and remit the actual fee due without paying the above charges, provided the estimated fee payment remitted is at least 90% of the actual fee due for the period.

5. **FEE ADJUSTMENTS:** You will be notified as to the amount and reason for any fee adjustment. Penalty and interest charges may be applicable to additional amounts owed the Commission by reason of the adjustment. The company may file a written request for a refund of any overpayments. The request should be directed to Fiscal Services at the below-referenced address.
6. **MAILING INSTRUCTIONS:** Please complete this form, make a copy for your files, and return the original in the enclosed preaddressed envelope. Use of this envelope should assure a more accurate and expeditious recording of your payment. **Make your check payable to the Florida Public Service Commission.** If you are unable to use the enclosed envelope, please address your remittance as follows:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

ATTENTION: Fiscal Services

7. **ADDITIONAL ASSISTANCE:** If you need additional assistance in preparing your Regulatory Assessment Fee Return or regarding telecommunications facilities, please contact the Division of Regulatory Analysis at (850) 413-6600. This division may be contacted at the above-referenced address, directing correspondence to the attention of the division.

FLORIDA PUBLIC SERVICE COMMISSION
Instructions For Filing Regulatory Assessment Fee Return
(Pay Telephone Service Provider)

1. **WHEN TO FILE:** For companies which owed a total of **\$10,000 or more** of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return is required twice a year and payment must be filed or postmarked:

On or before July 30 for the six-month period January 1 through June 30, **and**
On or before January 30 for the six-month period July 1 through December 31.

For companies which owed a total of **less than \$10,000** of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return and payment must be filed or postmarked:

On or before January 30 for the prior twelve-month period January 1 through December 31.

However, if July 30 or January 30 falls on a Saturday, Sunday, or holiday, the Regulatory Assessment Fee may be filed or postmarked on the next business day, without penalty.

2. **FEES:** Each company shall pay 0.0016 ~~0.0020~~ of its gross operating revenues derived from intrastate business, as referenced in Rule 25-4.0161(2)(a), F.A.C., for 2011 and as referenced in Rule 25-4.0161(2)(b), F.A.C., for 2012 and beyond. Gross Operating Revenues are defined as the total revenues before expenses. Gross Intrastate Operating Revenues are defined as revenues from calls originating and terminating within Florida. Do not deduct any expenses, taxes, or uncollectibles from these amounts other than the amount on Line 3.

On Line 3, deduct any amounts paid to another telecommunications company for the use of any telecommunications network (including installation charges) to provide service to its customers. **Do not deduct any taxes, federal subscriber line charges, interstate long distance access charges, or amounts paid for nonregulated services such as voice mail, inside wire maintenance, or equipment purchases/rentals. DEDUCTIONS MUST BE INTRASTATE ONLY AND MUST BE VERIFIABLE.**

3. **FAILURE TO FILE BY DUE DATE:** Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 6). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total of 12% per year (Line 7). A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due.

When a company fails to timely file a Regulatory Assessment Fee Return, the Commission has the authority to order the company to pay a penalty and/or cancel the company's certificate. The company will have an opportunity to respond to any proposed Commission action.

4. **EXTENSION:** ~~A company, for good cause shown in a written request, may be granted up to a 30-day extension. A request for an extension of time up to 30 days may~~ must be made by filing the enclosed *Regulatory Assessment Fee Extension Request* form (PSC/ADM 124), two weeks prior to the filing date. When an extension is granted, a charge shall be added to the amount due (Line 8):

0.75% of the fee to be remitted for an extension of 15 days or less, *or*
1.5% of the fee for an extension of 16 to 30 days.

In lieu of paying the charges outlined above, a system company may file a return and remit payment based upon estimated gross operating revenues by checking the "Estimated Return" space in the top left-hand corner on the reverse side. If such return is filed by the normal due date, the system company shall be granted a 30-day extension period in which to file and remit the actual fee due without paying the above charges, provided the estimated fee payment remitted is at least 90% of the actual fee due for the period. ~~An automatic 30-day extension to file an actual return may be obtained by checking the "Estimated Return" space in the top left-hand corner on the reverse side.~~

5. **FEE ADJUSTMENTS:** You will be notified as to the amount and reason for any fee adjustment. Penalty and interest charges may be applicable to additional amounts owed the Commission by reason of the adjustment. The company may file a written request for a refund of any overpayments. The request should be directed to Fiscal Services at the below-referenced address.
6. **MAILING INSTRUCTIONS:** Please complete this form, make a copy for your records, and return the original in the enclosed preaddressed envelope. Use of this envelope should assure a more accurate and expeditious recording of your payment. **Make your check payable to the Florida Public Service Commission.** If you are unable to use the envelope, please address your remittance as follows:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

ATTENTION: Fiscal Services

7. **ADDITIONAL ASSISTANCE:** If you need additional assistance in preparing your Regulatory Assessment Fee Return or regarding telecommunications facilities, please contact the Division of Regulatory Analysis at (850) 413-6600. This division may be contacted at the above-referenced address, directing correspondence to the attention of the division.

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE
Interim Pay Telephone Service Provider Regulatory Assessment Fee Return
Used for Calendar Year 2011 Only
 Florida Public Service Commission

STATUS:

- Actual Return
 Estimated Return
 Amended Return

(See Filing Instructions on Back of Form)

PERIOD COVERED:
 «Field3»

Please Complete Below If Official Mailing Address Has Changed

FOR PSC USE ONLY

Check # _____
 \$ _____ 06-03-001
 _____ 003001
 \$ _____ E
 \$ _____ P 06-03-001
 _____ 004011
 \$ _____ I
 Postmark Date _____
 Initials of Preparer _____

 (Name of Company) (Address) (City/State) (Zip)

LINE NO.	ACCOUNT CLASSIFICATION	AMOUNT
1.	Gross Operating Revenue (Florida)	\$ _____
2.	Gross Intrastate Revenue	_____
3.	Less: Amounts Paid to Other Telecommunications Companies ⁽¹⁾ (see "2. Fees" on back)	(_____)
4.	TOTAL REVENUES for Regulatory Assessment Fee Calculation (Line 2 less Line 3)	\$ _____
5.	REGULATORY ASSESSMENT FEE DUE - (Multiply Line 4 by 0.0018 If more than \$100, enter amount. If less, enter \$100.) ⁽²⁾	_____
6.	Penalty for Late Payment (see "3. Failure to File by Due Date" on back)	_____
7.	Interest for Late Payment (see "3. Failure to File by Due Date" on back)	_____
8.	Extension Payment Fee (see "4. Extension" on back)	_____
9.	TOTAL AMOUNT DUE (Add lines 5 through 8)	\$ _____
10.	Number of pay telephones in operation at close of period covered by this Return	_____

(1) These amounts must be intrastate only and must be verifiable (see "2. Fees" on back).
 (2) Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee of \$100 shall be imposed as provided in Section 364.336, Florida Statutes.

I, the undersigned owner/officer of the above-named company, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

 (Signature of Company Official) (Title) (Date)

 (Preparer of Form - Please Print Name) Telephone Number () Fax Number ()

F.E.I. No. _____

FLORIDA PUBLIC SERVICE COMMISSION
Instructions For Filing Regulatory Assessment Fee Return
(Pay Telephone Service Provider)

1. **WHEN TO FILE:** For companies which owed a total of **\$10,000 or more** of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return is required twice a year and payment must be filed or postmarked:

On or before July 30 for the six-month period January 1 through June 30, **and**
On or before January 30 for the six-month period July 1 through December 31.

For companies which owed a total of **less than \$10,000** of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return and payment must be filed or postmarked:

On or before January 30 for the prior twelve-month period January 1 through December 31.

However, if July 30 or January 30 falls on a Saturday, Sunday, or holiday, the Regulatory Assessment Fee may be filed or postmarked on the next business day, without penalty.

2. **FEES:** Each company shall pay 0.0018 of its gross operating revenues derived from intrastate business, as referenced in Rule 25-4.0161(2)(a), F.A.C. Gross Operating Revenues are defined as the total revenues before expenses. Gross Intrastate Operating Revenues are defined as revenues from calls originating and terminating within Florida. Do not deduct any expenses, taxes, or uncollectibles from these amounts other than the amount on Line 3.

On Line 3, deduct any amounts paid to another telecommunications company for the use of any telecommunications network (including installation charges) to provide service to its customers. **Do not deduct any taxes, federal subscriber line charges, interstate long distance access charges, or amounts paid for nonregulated services such as voice mail, inside wire maintenance, or equipment purchases/rentals. DEDUCTIONS MUST BE INTRASTATE ONLY AND MUST BE VERIFIABLE.**

3. **FAILURE TO FILE BY DUE DATE:** Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 6). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total of 12% per year (Line 7). A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due.

When a company fails to timely file a Regulatory Assessment Fee Return, the Commission has the authority to order the company to pay a penalty and/or cancel the company's certificate. The company will have an opportunity to respond to any proposed Commission action.

4. **EXTENSION:** A company, for good cause shown in a written request, may be granted up to a 30-day extension. A request be made by filing the enclosed *Regulatory Assessment Fee Extension Request* form (PSC/ADM 124), two weeks prior to the filing date. When an extension is granted, a charge shall be added to the amount due (Line 8):

0.75% of the fee to be remitted for an extension of 15 days or less, *or*
1.5% of the fee for an extension of 16 to 30 days.

In lieu of paying the charges outlined above, a company may file a return and remit payment based upon estimated gross operating revenues by checking the "Estimated Return" space in the top left-hand corner on the reverse side. If such return is filed by the normal due date, the company shall be granted a 30-day extension period in which to file and remit the actual fee due without paying the above charges, provided the estimated fee payment remitted is at least 90% of the actual fee due for the period.

5. **FEE ADJUSTMENTS:** You will be notified as to the amount and reason for any fee adjustment. Penalty and interest charges may be applicable to additional amounts owed the Commission by reason of the adjustment. The company may file a written request for a refund of any overpayments. The request should be directed to Fiscal Services at the below-referenced address.

6. **MAILING INSTRUCTIONS:** Please complete this form, make a copy for your records, and return the original in the enclosed preaddressed envelope. Use of this envelope should assure a more accurate and expeditious recording of your payment. **Make your check payable to the Florida Public Service Commission.** If you are unable to use the envelope, please address your remittance as follows:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

ATTENTION: Fiscal Services

7. **ADDITIONAL ASSISTANCE:** If you need additional assistance in preparing your Regulatory Assessment Fee Return or regarding telecommunications facilities, please contact the Division of Regulatory Analysis at (850) 413-6600. This division may be contacted at the above-referenced address, directing correspondence to the attention of the division.

FLORIDA PUBLIC SERVICE COMMISSION

(Type of Industry)

REGULATORY ASSESSMENT FEE EXTENSION REQUEST

(Utility/Company)

(Utility/Co Code)

(FEID No.)

Mailing Address:

This is to request an extension for filing the Regulatory Assessment Fee Return for the above-named utility/company for the period indicated below:

PERIOD - ,

15 days to ,

30 days to ,

Statement of Good Cause (Reason For Request):

(Signature)

(Title)

(Date)

(Telephone Number)

(FAX Number)

NOTE TO UTILITY/COMPANY

- Your Regulatory Assessment Extension Fee Extension Request form must be filed and received by the Florida Public Service Commission at the address referenced below BY CLOSE OF BUSINESS ON before the payment due date of . Once your request is received, you will be notified by fax (or by mail when a faxed number is not provided) indicating that your request was approved or denied. THIS IS NOT AN AUTOMATIC EXTENSION, THEREFORE YOU MUST RECEIVE APPROVAL FROM THE COMMISSION IN ORDER TO RECEIVE AN EXTENSION. See approval criteria on the back of this form.
- If an extension of 15 days or less is approved, 0.75% of the fee is to be included when making payment.
- If an extension of 16 to 30 days is approved, 1.5% of the fee is to be included when making payment.

FOR PUBLIC SERVICE COMMISSION USE ONLY

Request Approved

Request Denied

The 200__ Regulatory Assessment Fee has not been received.

The 200__ Regulatory Assessment Fee was delinquent. Prior penalty and/or interest has not been received for your 200__ Regulatory Assessment Fee.

The request was received too late for processing.

APPROVED BY:

(Fiscal Services Section Supervisor)

(Date)

If you have questions, please contact a staff member of the Fiscal Services Section or write to Division of Administrative Services, Fiscal Services Section, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399.

Criteria for Extension Request

- Form PSC/ADM 124, Regulatory Assessment Fee Extension Request, must contain a statement of good cause/reason for extension request. Examples of good cause include reasons such as financial hardship, severe illness, or acts of God; but do not include reasons such as management oversight or vacation time.
- The request for extension must be received by the Division of Administrative Services at least two weeks before the Regulatory Assessment Fee due date.
- The request for extension will not be granted if the utility has any unpaid regulatory assessment fees, penalties, and/or interest due from a prior period(s).
- Please be aware that pursuant to Section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree.

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: September 8, 2011
TO: Kathryn Gale Winter Cowdery, Senior Attorney, Office of the General Counsel
FROM: William B. McNulty, Economic Analyst, Division of Economic Regulation
RE: Statement of Estimated Regulatory Costs for Proposed Rule Amendments to Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Docket No. 110224-TP

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. Currently, the assessed rate is 0.20 percent of a certificated company's gross operating revenues derived from intrastate business and minimum rates are specific to each type of telecommunications company.

The draft rule would decrease the telecommunications companies' RAF rate to 0.16 percent in response to statutory requirements of the Regulatory Reform Act passed by the 2011 Legislature and signed into law by the Governor. Minimum annual RAFs for local exchange companies would be decreased from \$1,000 to \$600. Minimum annual RAFs for Shared Tenant Providers' would increase from \$100 to \$600. All other types of telecommunication companies' minimum rates would not change (i.e. Competitive Local Exchange Companies' and Alternative Access Vendors' minimum annual RAFs would remain at \$600, and pay telephone providers' minimum annual RAFs would remain at \$100). In addition, no RAF revenue would be collected from interexchange companies since they are now deregulated. These changes are designed to reflect the reductions in regulatory activities resulting from the amendments to Chapter 364 which took effect on July 1, 2011.

The following items address Section 120.541, F.S., requirements regarding the Statement of Estimated Regulatory Costs (SERC) presented as part of Staff's recommendation in this proceeding.

Economic Analysis Showing Whether The Rule Is Likely To Have An Adverse Impact On Either Economic Growth Or Business Competitiveness In Excess Of \$1 Million Within 5 Years

Section 120.541(2)(a)1 requires an economic analysis showing whether the draft rule directly or indirectly is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Similarly, Section 120.541(2)(a)2 requires

an economic analysis showing whether the draft rule directly or indirectly is likely to have an adverse impact on business competitiveness in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Since the intent of the draft rule is to reduce the RAF rates rather than to increase them, economic growth, private job sector employment, private sector investment, and business competitiveness are not expected to be adversely impacted during the five year period identified in the statute. One notable exception to the proposed decrease in RAF rates is the proposed rate for shared tenant service providers. Shared tenant service providers have typically paid the minimum annual RAF rate, but that rate is proposed to increase from \$100 to \$600 since such entities have become local exchange companies under the new legislation.

Economic Analysis Showing Whether The Rule Is Likely To Increase Regulatory Costs In Excess Of \$1 Million Within 5 Years

Section 120.541(2)(a)3 requires an economic analysis showing whether the draft rule directly or indirectly is likely to increase regulatory cost, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. RAF revenue during the first year of rule implementation (2012-2013) is expected to decrease by \$1,185,115 based on the proposed RAF rates relative to the existing RAF rates. RAF revenue collected in each of the following 4 years is expected to likewise be substantially reduced relative to what would be collected under existing RAF rates. Thus, the regulatory costs are expected to be reduced in the aggregate for the 5 years following the enactment of the rule.

Estimated Number Of Entities Required To Comply And General Description Of Individuals Affected

Section 120.541(2)(b) requires a good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals anticipated to be affected by the rule. The number of telecommunications companies which are required to comply with the rule as of July 1, 2011, include:

- 10 incumbent local exchange companies,
- 25 alternative access vendors,
- 298 competitive local exchange companies,
- 106 pay telephone providers, and
- 20 shared tenant service providers.

The proposed minimum annual RAF rate for competitive local exchange companies, alternative access vendors, and pay telephone service providers are the same as the current minimum annual RAF rate. In 2010, 341 of 417 such companies paid the minimum annual RAF rate. A similar or slightly lower number of companies is expected to pay the minimum annual RAF fee in 2012-2013.

At the August 22, 2011, staff rule development workshop, staff solicited feedback from the telecommunications companies regarding the expected impact of the draft rule on their customers. No responses to the requests for expected customer impacts were received. Staff believes that the impact of the fee reduction on customers will be de minimus.

Rule Implementation And Enforcement Cost And Impact On Revenues For The Agency And Other State And Local Government Entities

Section 120.541(2)(c) requires a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues. The rule development process includes a sequence of actions by the agency which vary according to the rule being implemented. These steps include rule drafting; a rule development workshop; preparing, filing, and presenting a rule recommendation (including a SERC); Commission consideration of the draft rule recommendation at an Agenda Conference; a rule hearing if one is requested; a possible additional agenda conference for those cases where a rule hearing is conducted or written comments are filed; and ultimately, filing the rule with the Secretary of State. Most of the costs to the agency associated with these rule development actions, including a possible rule hearing, are fixed costs and not likely to be affected substantially for the level of complexity associated with the development of this rule. Enforcement costs with the rule change are also primarily fixed costs and should remain at approximately the same levels as they have been in the past.

The impact on state revenues is expected to be a decrease of \$1,185,115 in revenues in the first year of rule implementation, based on the latest estimated gross intrastate revenues for 2012-2013:

Estimated 2012-2013 Gross Intrastate Revenues:	\$2,962,787,000
Estimated 2012-2013 RAF Revenue at 0.20 %:	\$5,925,574
Estimated 2012-2013 RAF Revenue at 0.16 %:	<u>\$4,740,459</u>
Change in RAF Revenue at 0.16%:	(\$1,185,115)

The impact on local government revenue is expected to be de minimis.

Estimated Transactional Costs To Individuals And Entities

Section 120.541(2)(d) requires a good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. Under the draft rule, telecommunication companies would be required to prepare revised RAF forms similar to the current RAF forms in terms of the required information. Companies which choose to revise the rates they charge their customers based on the revised RAF rates would have some minor expense associated with implementing the rate changes.

At the August 22, 2011, staff rule development workshop, staff solicited feedback from the telecommunications companies regarding the expected impact of the draft rule on their customers. No responses to the requests for expected customer impacts were received. Staff believes that the impact of the fee reduction on customers will be de minimus.

Impact On Small Businesses , Small Cities, Or Small Counties

Section 120.541(2)(e) requires an analysis of the impact of the proposed rule change on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined in Section 120.52, F.S. Staff solicited written comments on

this matter from the telecommunications companies at the August 22, 2011 rule development workshop. No comments were received. Staff believes the impact of the proposed RAF fee changes on small businesses, small counties, and small cities will be de minimus.

Additional Information Deemed Useful By The Agency

None.

cc: Chuck Hill
Beth Salak
Dale Mailhot
Marshall Willis