

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF STAFF RULE DEVELOPMENT WORKSHOP

TO

ALL INTERESTED PERSONS

UNDOCKETED

IN RE: INITIATION OF RULEMAKING TO AMEND RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, LOCAL, LOCAL TOLL, OR TOLL PROVIDER SELECTION, AND TO REPEAL RULE 25-4.083, FLORIDA ADMINISTRATIVE CODE, PREFERRED CARRIER FREEZE

ISSUED: November 14, 2011

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission Staff has initiated rulemaking to amend Rule 25-4.118, Florida Administrative Code, to comply with recent changes to section 364.16(5), Florida Statutes, relating to unauthorized changes of a subscriber's local telecommunications service and preferred carrier freezes, to incorporate the substance of Rule 25-4.083 into Rule 25-4.118, Florida Administrative Code, and to repeal Rule 25-4.083, Florida Administrative Code. The amendments to Rule 25-4.118 would be consistent with the Telecommunications Act of 1996, provide for specific verification methods, provide for subscriber notification regarding a preferred carrier freeze at no charge, allow for a subscriber's change to be considered valid if verification is performed consistent with Commission rules, and provide remedies for violations of the rule and allow for the imposition of other penalties available under Chapter 364, Florida Statutes.

A staff rule development workshop, to which all persons are invited, will be held at the following time and place:

Monday, December 5, 2011, at 9:30 a.m.
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, FL 32399-0862.

A copy of the draft rules and the agenda for the workshop are attached. One or more Commissioners may be in attendance and participate in the workshop. The person to be contacted regarding the proposed rule development is Rosanne Gervasi, Office of the General Counsel, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, (850) 413-6224,

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NOTICE OF STAFF RULE DEVELOPMENT WORKSHOP
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PAGE 2

rgervasi@psc.state.fl.us. For telephone participation in the workshop, please dial 1-888-808-6959, code 413-6261.

If you wish to comment but cannot attend the workshop, please submit your comments to: Rosanne Gervasi, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0852 (850) 413-6224.

In accordance with the Americans with Disabilities Act, persons requiring a special accommodation to participate at this workshop should contact the Office of Commission Clerk no later than five days prior to the workshop at 2540 Shumard Oak Boulevard., Tallahassee, Florida 32399-0850, via 1-800-955-8770 (Voice) or 1-800-955-8771 (TDD), Florida Relay Service.

By DIRECTION of the Florida Public Service Commission this 14th day of November, 2011.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
(850) 413-6770
www.floridapsc.com

RG

FLORIDA PUBLIC SERVICE COMMISSION

AGENDA

STAFF WORKSHOP

UNDOCKETED - INITIATION OF RULEMAKING TO AMEND RULE 25-4.118,
FLORIDA ADMINISTRATIVE CODE, LOCAL, LOCAL TOLL, OR TOLL PROVIDER
SELECTION, AND TO REPEAL RULE 25-4.083, FLORIDA ADMINISTRATIVE CODE,
PREFERRED CARRIER FREEZE

Monday, December 5, 2011, at 9:30 a.m.
Betty Easley Conference Center, Room 148
4075 Esplanade Way
Tallahassee, Florida 32399-0850

1. Staff overview of draft rule
2. Comments and alternative suggestions from interested persons
3. Discussion of suggested changes and timeframes for next steps
4. Adjournment

1 **25-4.118 Changing of a Subscriber's Telecommunications Service and Preferred Carrier**
2 **Freeze, Local, Local Toll, or Toll Provider Selection.**

3 (1) A local service provider shall meet the requirements as prescribed by the Federal
4 Communications Commission in Title 47, Code of Federal Regulations, Part 64, Subpart K,
5 Sections 64.1100 Definitions, 64.1120 Verification of Orders for Telecommunications
6 Service, and 64.1130 Letter of Agency Form and Content, as amended March 12, 2008,
7 which are hereby incorporated into this rule by reference. ~~The provider of a customer shall~~
8 ~~not be changed without the customer's authorization. The customer or other authorized person~~
9 ~~may change the residential service. For the purposes of this section, the term "other authorized~~
10 ~~person" shall mean a person 18 years of age or older within the same household. The person~~
11 ~~designated as the contact for the local telecommunications company, an officer of the~~
12 ~~company, or the owner of the company is the person authorized to change business service. A~~
13 ~~LEC shall accept a provider change request by telephone call or letter directly from its~~
14 ~~customers; or~~

15 (2)(a) A company shall not be deemed to have committed an unauthorized carrier change
16 infraction if the company, including its agents and contractors, did the following: A LEC shall
17 accept a change request from a certified LP or IXC acting on behalf of the customer. A
18 certificated LP or IXC shall submit a change request only if it has first certified to the LEC
19 that at least one of the following actions has occurred:

20 (a) ~~The provider has a letter of agency (LOA), as described in subsection (3), from the~~
21 ~~customer requesting the change;~~

22 1. Followed the procedures required under subsection (1) with respect to the person
23 requesting the change;

24 2. Followed these procedures in good faith; and

25 3. Complied with the credit procedures of subsection (3).

- 1 (b) In determining whether penalties or other remedies are appropriate for an unauthorized
2 carrier change infraction, the Commission shall consider the actions taken by the company to
3 mitigate or undo the effects of the unauthorized change. These actions include but are not
4 limited to whether the company, including its agents and contractors: ~~The provider has~~
5 ~~received a customer-initiated call, and beginning six months after the effective date of this rule~~
6 ~~has obtained the following:~~
- 7 1. Followed the procedures required under subsection (1) with respect to the person
8 requesting the change in good faith; ~~The information set forth in subparagraphs (3)(a)1-~~
9 ~~through 5.; and~~
- 10 2. Complied with the credit procedures of subsection (3); ~~Verification data including at least~~
11 ~~one of the following:~~
- 12 a. ~~The customer's date of birth;~~
13 b. ~~The last four digits of the customer's social security number; or~~
14 c. ~~The customer's mother's maiden name.~~
- 15 3. Took prompt action in response to the unauthorized change;
16 4. Reported to the Commission any unusual circumstances that might have adversely
17 affected customers such as system errors or inappropriate marketing practices that resulted in
18 unauthorized changes and the remedial action taken;
- 19 5. Reported any unauthorized provider changes concurrently affecting a large number of
20 customers; or
- 21 6. Took other corrective action to remedy the unauthorized change appropriate under the
22 circumstances.
- 23 (c) ~~A firm that is independent and unaffiliated with the provider claiming the subscriber has~~
24 ~~verified the customer's requested change by obtaining the following:~~
- 25 1. ~~The customer's consent to record the requested change or the customer has been notified~~

1 that the call will be recorded; and

2 ~~2. Beginning six months after the effective date of this rule an audio recording of the~~
3 ~~information stated in subparagraphs (3)(a)1. through 5.; or~~

4 ~~(d)1. The provider has received a customer's change request, and has responded by mailing~~
5 ~~an informational package that shall include the following:~~

6 ~~a. A notice that the information is being sent to confirm that a customer's request to change~~
7 ~~the customer's telecommunications provider was obtained;~~

8 ~~b. A description of any terms, conditions, or charges that will be incurred;~~

9 ~~c. The name, address, and telephone number of both the customer and the soliciting~~
10 ~~company;~~

11 ~~d. A postcard which the customer can use to confirm a change request;~~

12 ~~e. A clear statement that the customer's local, local toll, or toll provider will be changed to~~
13 ~~the soliciting company only if the customer signs and returns the postcard confirming the~~
14 ~~change; and~~

15 ~~f. A notice that the customer may contact by writing the Commission's Division of Service,~~
16 ~~Safety and Consumer Assistance, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-~~
17 ~~0850, or by calling, toll-free (TDD & Voice) 1 (800) 342-3552, for consumer complaints.~~

18 ~~2. The soliciting company shall submit the change request to the LP only if it has first~~
19 ~~received the postcard that must be signed by the customer.~~

20 (3)(a) Charges for unauthorized local provider changes billed on behalf of the unauthorized
21 provider for the first 30 days or first billing cycle, whichever is longer, shall be credited to the
22 customer by the company responsible for the error within 45 days of notification to the
23 company by the customer, unless the claim is false. Upon notice from the customer of an
24 unauthorized provider change, the local service provider shall change the customer back, or to
25 another company of the customer's choice. The LOA submitted to the company requesting a

1 ~~provider change shall include the following information (Each shall be separately stated):~~

2 ~~1. Customer's billing name, address, and each telephone number to be changed;~~

3 ~~2. Statement clearly identifying the certificated name of the provider and the service to~~
4 ~~which the customer wishes to subscribe, whether or not it uses the facilities of another~~
5 ~~company;~~

6 ~~3. Statement that the person requesting the change is authorized to request the change;~~

7 ~~4. Statement that the customer's change request will apply only to the number on the request~~
8 ~~and there must only be one presubscribed local, one presubscribed local toll, and one~~
9 ~~presubscribed toll provider for each number;~~

10 ~~5. Statement that the LEC may charge a fee for each provider change;~~

11 ~~6. Customer's signature and a statement that the customer's signature or endorsement on the~~
12 ~~document will result in a change of the customer's provider.~~

13 ~~(b) The soliciting company's provider change fee statement, as described in subparagraph~~
14 ~~(a)5. above, shall be legible, printed in boldface at least as large as any other text on the page,~~
15 ~~and located directly above the signature line.~~

16 ~~(c) The soliciting company's provider change statement, as described in subparagraph (a)6.~~
17 ~~above, shall be legible, printed in boldface at least as large as any other text on the page, and~~
18 ~~located directly below the signature line.~~

19 ~~(4) A local service provider shall make available a preferred carrier (PC) freeze upon a~~
20 ~~subscriber's request and shall meet the requirements as prescribed by the Federal~~
21 ~~Communications Commission in Title 47, Code of Federal Regulations, Part 64, Subpart K,~~
22 ~~Section 64.1190, Preferred Carrier Freeze, as amended March 12, 2008, which is hereby~~
23 ~~incorporated into this rule by reference. The LOA shall not be combined with inducements of~~
24 ~~any kind on the same document. The document as a whole must not be misleading or~~
25 ~~deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of~~

1 ~~the style, format or content of the document or oral statements, it would not be readily~~
2 ~~apparent to the person signing the document or providing oral authorization that the purpose~~
3 ~~of the signature or the oral authorization was to authorize a provider change, or it would be~~
4 ~~unclear to the customer who the new provider would be; that the customer's selection would~~
5 ~~apply only to the number listed and there could only be one long distance service provider for~~
6 ~~that number; or that the customer's LP might charge a fee to switch service providers. If any~~
7 ~~part of the LOA is written in a language other than English, then it must contain all relevant~~
8 ~~information in each language. Notwithstanding the above, the LOA may be combined with~~
9 ~~checks that contain only the required LOA language as prescribed in subsection (3) of this~~
10 ~~section and the information necessary to make the check a negotiable instrument. The LOA~~
11 ~~check shall not contain any promotional language or material. The LOA check shall contain in~~
12 ~~easily readable, bold face type on the front of the check, a notice that the consumer is~~
13 ~~authorizing a primary carrier change by signing the check. The LOA language shall be placed~~
14 ~~near the signature line on the back of the check.~~

15 ~~(5) A PC-Freeze shall not be required as a condition for obtaining service. ~~A prospective~~~~
16 ~~provider must have received the signed LOA before initiating the change.~~

17 ~~(6) A PC-Freeze shall be implemented or removed at no charge to the subscriber.~~

18 ~~Information obtained under paragraphs (2)(a) through (d) shall be maintained by the provider~~
19 ~~for a period of one year.~~

20 ~~(7) A local service provider shall provide notification to subscribers of the ability to freeze~~
21 ~~the subscriber's choice of carriers, at no charge, with the customer's first bill, via letter, or by~~
22 ~~electronic communication, and annually thereafter that a PC-Freeze is available at no charge.~~

23 ~~Existing customers shall be notified annually that a PC-Freeze is available at no charge.~~

24 ~~Customer requests for other services, such as travel card service, do not constitute a provider~~
25 ~~change.~~

1 ~~(8) Charges for unauthorized provider changes and all 1+ charges billed on behalf of the~~
2 ~~unauthorized provider for the first 30 days or first billing cycle, whichever is longer, shall be~~
3 ~~credited to the customer by the company responsible for the error within 45 days of~~
4 ~~notification to the company by the customer, unless the claim is false. After the first 30 days~~
5 ~~up to 12 months, all 1+ charges over the rates of the preferred company will be credited to the~~
6 ~~customer by the company responsible for the error within 45 days of notification to the~~
7 ~~company by the customer, unless the claim is false. Upon notice from the customer of an~~
8 ~~unauthorized provider change, the LEC shall change the customer back, or to another~~
9 ~~company of the customer's choice. The change must be made within 24 hours excepting~~
10 ~~Saturday, Sunday, and holidays, in which case the change shall be made by the end of the next~~
11 ~~business day. The provisions of this subsection apply whether or not the change is deemed to~~
12 ~~be an authorized carrier change infraction under subsection (13).~~

13 ~~(9) The company shall provide the following disclosures when soliciting a change in service~~
14 ~~from a customer:~~

15 ~~(a) Identification of the company;~~

16 ~~(b) That the purpose of the visit or call is to solicit a change of the provider of the customer;~~

17 ~~(c) That the provider shall not be changed unless the customer authorizes the change;~~

18 ~~(d) Upon a customer's request, the following information will be provided verbally or in~~
19 ~~writing:~~

20 ~~1. Any nonrecurring charge;~~

21 ~~2. Any monthly service charge or minimum usage charge;~~

22 ~~3. Company deposit practices;~~

23 ~~4. Any charge applicable to call attempts not answered;~~

24 ~~5. A statement of when charging for a call begins and ends; and~~

25 ~~6. A statement of billing adjustment practices for wrong numbers or incorrect bills.~~

1 ~~(10) During telemarketing and verification, no misleading or deceptive references shall be~~
2 ~~made while soliciting for subscribers.~~

3 ~~(11) A provider must provide the customer a copy of the authorization it relies upon in~~
4 ~~submitting the change request within 15 calendar days of request.~~

5 ~~(12) Each provider shall maintain a toll free number for accepting complaints regarding~~
6 ~~unauthorized provider changes, which may be separate from its other customer service~~
7 ~~numbers, and must be answered 24 hours a day, seven days a week. If the number is a separate~~
8 ~~toll free number, beginning six months after the effective date of this rule new customers must~~
9 ~~be notified of the number in the information package provided to new customers or on their~~
10 ~~first bill. The number shall provide a live operator or shall record end user complaints made to~~
11 ~~the customer service number to answer incoming calls. A combination of live operators and~~
12 ~~recorders may be used. If a recorder is used, the company shall attempt to contact each~~
13 ~~complainant no later than the next business day following the date of recording and for three~~
14 ~~subsequent days unless the customer is reached. If the customer is not reached, the company~~
15 ~~shall send a letter to the customer's billing address informing the customer as to the best time~~
16 ~~the customer should call or provide an address to which correspondence should be sent to the~~
17 ~~company. Beginning six months after the effective date of this rule, a minimum of 95 percent~~
18 ~~of all call attempts shall be transferred by the system to a live attendant or recording device~~
19 ~~prepared to give immediate assistance within 60 seconds after the last digit of the telephone~~
20 ~~number listed as the customer service number for unauthorized provider change complaints~~
21 ~~was dialed; provided that if the call is completed within 15 seconds to an interactive, menu-~~
22 ~~driven, voice response unit, the 60 second answer time shall be measured from the point at~~
23 ~~which the customer selects a menu option to be connected to a live attendant. Station busies~~
24 ~~will not be counted as completed calls. The term "answer" as used in this subsection means~~
25 ~~more than an acknowledgment that the customer is waiting on the line. It shall mean the~~

1 ~~provider is ready to render assistance or accept the information necessary to process the call.~~
2 ~~(13)(a) A company shall not be deemed to have committed an unauthorized carrier change~~
3 ~~infraction if the company, including its agents and contractors, did the following:~~
4 ~~1. Followed the procedures required under subsection (2) with respect to the person~~
5 ~~requesting the change;~~
6 ~~2. Followed these procedures in good faith; and~~
7 ~~3. Complied with the credit procedures of subsection (8).~~
8 ~~(b) In determining whether fines or other remedies are appropriate for an unauthorized~~
9 ~~carrier change infraction, the Commission shall consider the actions taken by the company to~~
10 ~~mitigate or undo the effects of the unauthorized change. These actions include but are not~~
11 ~~limited to whether the company, including its agents and contractors:~~
12 ~~1. Followed the procedures required under subsection (2) with respect to the person~~
13 ~~requesting the change in good faith;~~
14 ~~2. Complied with the credit procedures of subsection (8);~~
15 ~~3. Took prompt action in response to the unauthorized change;~~
16 ~~4. Reported to the Commission any unusual circumstances that might have adversely~~
17 ~~affected customers such as system errors or inappropriate marketing practices that resulted in~~
18 ~~unauthorized changes and the remedial action taken;~~
19 ~~5. Reported any unauthorized provider changes concurrently affecting a large number of~~
20 ~~customers; or~~
21 ~~6. Took other corrective action to remedy the unauthorized change appropriate under the~~
22 ~~circumstances.~~
23 *Rulemaking Authority 350.127(2), 364.01, 364.16(5) FS. Law Implemented 364.01, 364.16(5),*
24 *364.285 FS. History—New 3-4-92, Amended 5-31-95, 12-28-98, 5-8-05, 7-1-11, XX-XX-XX.*
25

1 ~~25-4.083 Preferred Carrier Freeze.~~

2 ~~(1) A local provider shall make available a PC Freeze upon a subscriber's request.~~

3 ~~(2) A PC Freeze shall not be required as a condition for obtaining service.~~

4 ~~(3) A PC Freeze shall be implemented or removed at no charge to the subscriber.~~

5 ~~(4) In addition to the requirements listed in subsections (1) through (3) above, a local provider~~

6 ~~shall meet the requirements as prescribed by the Federal Communications Commission in~~

7 ~~Title 47, Code of Federal Regulations, Part 64, Section 64.1190, Preferred Carrier Freeze,~~

8 ~~revised as of October 1, 2007, which is hereby incorporated into this rule by reference.~~

9 ~~Rulemaking Authority 350.127, 364.01, 364.603 FS. Law Implemented 364.01, 364.603 FS.~~

10 ~~History New 9-9-04, Amended 10-21-09, Repealed XX-XX-XX.~~

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