

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:** March 15, 2012

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Gervasi) *PS*  
Division of Regulatory Analysis (Salak) *SA*  
Office of Auditing and Performance Analysis (Mailhot) *em*  
Division of Economic Regulation (McNulty) *MM*

**RE:** Docket No. 120050-TP – Proposed amendment of Rule 25-4.020, F.A.C., Location and Preservation of Records, and Rule 25-4.0201, F.A.C., Audit Access to Records.

**AGENDA:** 03/27/12 – Regular Agenda – Rule Proposal – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Balbis

**RULE STATUS:** Proposal May Be Deferred

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\120050.RCM.DOC

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COMMISSION  
CLERK

### Case Background

Rule 25-4.020, Florida Administrative Code (F.A.C), Location and Preservation of Records, requires telecommunications companies to, among other things, keep their records at their offices within the state unless otherwise authorized by the Commission, and to preserve them in their original form for a specified period of time or utilize a storage and retrieval system that ensures the authenticity of documents and the completeness of records. Moreover, the rule requires companies to reimburse the Commission for reasonable travel expenses incurred during a Commission review of a company's records that are located out of state, but waives that requirement for a company whose records are located within 50 miles of the state line.

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Rule 25-4.0201, F.A.C., Audit Access to Records, addresses the reasonable access to the records of telecommunications companies, and to the records of their affiliates, which access was provided by section 364.183(1), F.S.

Staff is recommending the removal of the waiver language from the requirement in Rule 25-4.020, F.A.C., for telecommunications companies to reimburse the Commission for travel when their records are located within 50 miles of the Florida state line. However, staff does not believe the removal of the waiver language would impact any of the telecommunications companies. In addition, the 2011 Legislature eliminated from section 364.183(1), F.S., the Commission's authority to access the records of telecommunications company affiliates. Therefore, staff is recommending that the Commission propose to amend Rule 25-4.0201, F.A.C., accordingly.

The Commission's Notice of Development of Rulemaking was published on October 28, 2011, in Volume 37, Number 43, of the Florida Administrative Weekly. No rule development workshop was requested. The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), 364.016, and 364.183, F.S.

### **Discussion of Issues**

**Issue 1:** Should the Commission propose the amendment of Rule 25-4.020, F.A.C., Location and Preservation of Records, and of Rule 25-4.0201, F.A.C., Audit Access to Records?

**Recommendation:** Yes, the Commission should propose the amendment of Rules 25-4.020 and 25-4.0201, F.A.C., as set forth in Attachment A of this recommendation. (Gervasi, Mailhot, Salak)

#### **Staff Analysis:**

##### **Rule 25-4.020, F.A.C.**

Rule 25-4.020(1), F.A.C., requires telecommunications companies to keep their records at their offices within the state unless otherwise authorized by the Commission. This rule only applies to incumbent local exchange companies (ILECs), most of which have already received permission to move their books out of state. With the advent of electronic communications and the requirement for companies to reimburse the Commission for reasonable travel expenses incurred during any review of out-of-state records under Rule 25-4.020(2), F.A.C., this rule provision is no longer necessary. Moreover, since this provision only applies to the ILECs, striking it from the rule will result in equal treatment for the ILECs and the competitive local exchange carriers (CLECs). Staff recommends that paragraph (1) should be stricken, as shown on Attachment A, page 6, lines 16-18.

Rule 25-4.020(1)(b)2., F.A.C., waives the requirement for a company to reimburse the Commission for reasonable travel expenses incurred during a Commission review of a company's records that are located within 50 miles of the state line. This waiver language is obsolete, as it has not been utilized by a company since 1997, when Florala Telephone Company, Inc., an Alabama company, was acquired by GTC, Inc., and its records were relocated. Staff recommends that this language be stricken, as shown on Attachment A, page 7, line 14.

Rule 25-4.020(3), F.A.C., requires that the ILECs' records be preserved in their original form for a minimum of three years, or for a lesser period of time as specified in Form PSC/ECR/17-T (5/93), entitled "Schedule of Records and Periods of Retention." Alternatively, Rule 25-4.020(3)(a) and (b) allow companies to utilize a storage and retrieval system that ensures record authenticity and completeness. Due to improved technology, these requirements are no longer necessary. Finally, staff notes that since this provision only applies to the ILECs, striking it from the rule will result in equal treatment for the ILECs and CLECs. Staff recommends that these provisions of the rule should be stricken, as shown on Attachment A, page 7, line 15 through page 8, line 9.

##### **Rule 25-4.0201, F.A.C.**

Rule 25-4.0201, F.A.C., Audit Access to Records, addresses the reasonable access to the records of telecommunications companies, and to the records of their affiliates. The 2011 Legislature eliminated from section 364.183(1), F.S., the Commission's authority to access the records of telecommunications company affiliates. Accordingly, staff recommends that Rule 25-

4.0201, F.A.C., be amended to eliminate all references to Commission access to affiliate company records, as shown on Attachment A, page 9, lines 2, 19, and 22. Moreover, staff recommends that all references to “utility” should be changed to “company,” in keeping with the statutory references to telecommunications companies in section 364.183, F.S. See Attachment A, page 9, lines 2, 10, 12, 13, 15, 19, and 21.

#### Statement of Estimated Regulatory Costs

The Florida Administrative Procedure Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). Section 120.54(3)(b), F.S. An agency must prepare a SERC if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after implementation of the rule, and shall consider the impact of the rule on small businesses, small counties, and small cities. Id.

Section 120.541(2)(a), F.S., requires a SERC to include an economic analysis showing whether the rule, directly or indirectly, is likely to: 1) have an adverse impact on economic growth, private sector job creation, employment, or investment; 2) have an adverse impact on business competitiveness; or 3) increase regulatory costs; in excess of \$1 million in the aggregate within five years after the implementation of the rule. Section 120.541(3), F.S., requires that if the adverse impact or regulatory costs of the rule exceed any of those criteria, the rule shall be submitted to the President of the Senate and Speaker of the House, and may not take effect until it is ratified by the Legislature.

The SERC prepared by staff is included as Attachment B to this recommendation. It indicates that economic growth, private job sector employment, investment, and business competitiveness are not expected to be adversely impacted during the five-year period following implementation of the rule amendments because the intent of the amendments to Rule 25-4.020, F.A.C., is to eliminate the timeframe for the preservation of records, and because no companies are expected to be affected by the elimination of the waiver language regarding company reimbursement for records located within 50 miles of the state line. Moreover, the amendments to Rule 25-4.0201, F.A.C., to eliminate required access to affiliate records represents a lower level of regulatory requirement. Based on the SERC, the rule amendments will not require legislative ratification.

Attachment B also contains the estimated number of individuals and entities likely to be required to comply with the rules, the estimated cost of implementing and enforcing the rules, the estimated transactional costs likely to be incurred by individuals and entities required to comply with the rules, and an analysis of the impact on small businesses, small counties, and small cities. Section 120.541(2)(b)-(e), F.S., requires that a SERC include these considerations.

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**Issue 2:** Should this docket be closed?

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

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

1 **25-4.020 Location and Preservation of Records.**

2 (1) Any company that keeps its records outside the State shall reimburse the Commission for  
3 the reasonable travel expense incurred by each Commission representative during any review  
4 of the out-of-state records of the company or its affiliates. Reasonable travel expenses are  
5 those travel expenses that are equivalent to travel expenses paid by the Commission in the  
6 ordinary course of its business.

7 (a) The company shall remit reimbursement for out-of-state travel expenses within 30 days  
8 from the date the Commission mails the invoice.

9 (b) The reimbursement requirement in subsection (1) shall be waived for any company that  
10 makes its out-of-state records available at the company's office located in Florida or at another  
11 mutually agreed upon location in Florida within 10 working days from the Commission's  
12 initial request. If 10 working days is not reasonable because of the complexity and nature of  
13 the issues involved or the volume and type of material requested, the Commission may  
14 establish a different time frame for the company to bring records into the state. For individual  
15 data requests made during an audit, the response time frame established in Rule 25-4.0201,  
16 F.A.C., shall control. All records that a company is required to keep, by reason of these or  
17 other rules prescribed by the Commission, shall be kept at the office or offices of the company  
18 within the State unless otherwise authorized by the Commission.

19 (2) During any audit or review of records, the company shall provide Commission staff with  
20 adequate and comfortable working and filing space, consistent with the prevailing conditions  
21 and climate, and comparable with the accommodations provided the company's outside  
22 auditors. Any company that keeps its records outside the State shall reimburse the

23 Commission for the reasonable travel expense incurred by each Commission representative

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

1 ~~during any review of the out-of-state records of the company or its affiliates. Reasonable~~  
2 ~~travel expenses are those travel expenses that are equivalent to travel expenses paid by the~~  
3 ~~Commission in the ordinary course of its business.~~

4 ~~(a) The company shall remit reimbursement for out-of-state travel expenses within 30 days~~  
5 ~~from the date the Commission mails the invoice.~~

6 ~~(b) The reimbursement requirement in subsection (2) shall be waived:~~

7 ~~1. For any company that makes its out-of-state records available at the company's office~~  
8 ~~located in Florida or at another mutually agreed upon location in Florida within 10 working~~  
9 ~~days from the Commission's initial request. If 10 working days is not reasonable because of~~  
10 ~~the complexity and nature of the issues involved or the volume and type of material requested,~~  
11 ~~the Commission may establish a different time frame for the company to bring records into the~~  
12 ~~state. For individual data requests made during an audit, the response time frame established~~  
13 ~~in Rule 25-4.0201, F.A.C., shall control; or~~

14 ~~2. For a company whose records are located within 50 miles of the Florida state line.~~

15 ~~(3) All records shall be preserved for the period of time specified in Form PSC/ECR/17-T~~  
16 ~~(5/93), entitled "Schedule of Records and Periods of Retention" which is incorporated by~~  
17 ~~reference into this rule, and may be obtained from the Director, Division of Economic~~  
18 ~~Regulation, Florida Public Service Commission.~~

19 ~~(a) However, all source documents retained as required by subsection 25-4.020(3), F.A.C.,~~  
20 ~~shall be maintained in their original form for a minimum of three years, or for any lesser~~  
21 ~~period of time specified for that type of record in Form PSC/ECR/17-T, after the date the~~  
22 ~~document was created or received by the company. This paragraph does not require the~~  
23 ~~company to create paper copies of documents where the company would not otherwise do so~~

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25 existing law.

1 ~~in the ordinary course of its business. The Commission may waive the requirement that~~  
2 ~~documents be retained in their original form upon a showing by a company that it employs a~~  
3 ~~storage and retrieval system that consistently produces clear, readable copies that are~~  
4 ~~substantially equivalent to the originals, and clearly reproduces handwritten notations on~~  
5 ~~documents.~~

6 ~~(b) The company shall maintain written procedures governing the conversion of source~~  
7 ~~documents to a storage and retrieval system, which procedures ensure the authenticity of~~  
8 ~~documents and the completeness of records. Records maintained in the storage and retrieval~~  
9 ~~system must be easy to search and easy to read.~~

10 ~~(4) During any audit or review of records, the company shall provide Commission staff with~~  
11 ~~adequate and comfortable working and filing space, consistent with the prevailing conditions~~  
12 ~~and climate, and comparable with the accommodations provided the company's outside~~  
13 ~~auditors.~~

14 *Rulemaking Authority 350.127(2), 364.016, ~~364.17, 364.18, 364.183, 364.185~~ FS. Law*  
15 *Implemented 364.016, ~~364.17, 364.18, 364.183, 364.185~~ FS. History—Revised 12-1-68,*  
16 *Amended 3-31-76, Formerly 25-4.20, Amended 6-23-93, 11-13-95, 1-25-09, XX-XX-XX.*

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25 existing law.



1 **25-4.0201 Audit Access to Records.**

2 This rule addresses the reasonable access to company utility ~~and affiliate~~ records provided by  
3 Section 364.183(1), F.S., for the purposes of management and financial audits.

4 (1) The audit scope, audit program and objectives, and audit requests are not constrained by  
5 relevancy standards narrower than those provided by Section 364.183(1), F.S.

6 (2) Reasonable access means that company responses to audit requests for access to records  
7 shall be fully provided within the time frame established by the auditor. In establishing a due  
8 date, the auditor shall consider the location of the records, the volume of information  
9 requested, the number of pending requests, the amount of independent analysis required, and  
10 reasonable time for the company utility to review its response for possible claims of  
11 confidentiality or privilege.

12 (3) In those instances where the company utility disagrees with the auditor's assessment of a  
13 reasonable response time to the request, the company utility shall first attempt to discuss the  
14 disagreement with the auditor and reach an acceptable revised date. If agreement cannot be  
15 reached, the company utility shall discuss the issue with successive levels of supervisors at the  
16 Commission until an agreement is reached. If necessary, a final decision shall be made by the  
17 Prehearing Officer. If the audit is related to an undocketed case, the Chairman shall make the  
18 decision.

19 (4) The company utility ~~and its affiliates~~ shall have the opportunity to safeguard its ~~their~~  
20 records by copying them or logging them out, provided, however, that safeguard measures  
21 shall not be used to prevent reasonable access by Commission auditors to company utility ~~or~~  
22 ~~affiliate~~ records.

23 (5) Reasonable access to records includes reasonable access to personnel to obtain testimonial

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25 existing law.

1 evidence in response to inquiries or through interviews.

2 (6) Nothing in this rule shall preclude Commission auditors from making copies or taking  
3 notes. In the event these notes relate to documents for which the company has asserted  
4 confidential status, such notes shall also be given confidential status.

5 (7) Form PSC/APA 6 (2/95), entitled "Audit Document and Record Request/Notice of Intent"  
6 is incorporated by reference into this rule. This form is used by auditors when requests are  
7 formalized. This form documents audit requests, the due dates for responses, and all Notices  
8 of Intent to Seek Confidential Classification.

9 *Rulemaking Authority 350.127(2) FS. Law Implemented 364.183(1) FS. History—New 3-1-95,*  
10 *Amended XX-XX-XX*

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**DATE:** March 14, 2012  
**TO:** Rosanne Gervasi, 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 25-4.020, F.A.C., Location and Preservation of Records, and Rule 25-4.0201, F.A.C., Audit Access to Records

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Summary of Rules

Rule 25-4.020, Florida Administrative Code (F.A.C), Location and Preservation of Records, requires incumbent local exchange companies to keep all required records at its offices within the State of Florida, except in cases where the Commission authorizes records to be kept at locations outside the state. Telecommunications companies are required to reimburse the Commission for reasonable travel expenses associated with out-of-state Commission review of records, but the reimbursement requirement is waived if the company provides the information at a mutually agreeable location in Florida within 10 working days of the Commission's initial request or if the records are located within 50 miles of the Florida state line. The rule also specifies that incumbent local exchange company records shall be retained for a period of time identified in Form PSC/ECR/17-T (5/93), entitled "Schedule of Records and Periods of Retention.". The draft rule would eliminate the required time-specific retention of records referenced in Form PSC/ECR/17-T(5/93). Also, the draft rule would also eliminate the waiver of the reimbursement requirement for telecommunications companies whose records are located within 50 miles of the Florida state line.

Rule 25-4.0201, F.A.C., Audit Access to Records, requires incumbent local exchange companies to allow reasonable access to utility and affiliate records for purposes of management and financial audits. The draft rule would eliminate required access to affiliate records. Also, the draft rule proposes to change all references to the term "utility" to "company".

Economic Analysis Showing Whether the Rules Are Likely to Have an Adverse Impact on Either Economic Growth or Business Competitiveness In Excess of \$1 Million Within 5 Years.

Subparagraph 120.541(2)(a)1, Florida Statutes (F.S.), 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, Subparagraph 120.541(2)(a)2, F.S., 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 change to Rule 25-4.020, F.A.C., is to eliminate the time frame for the preservation of records by incumbent local exchange companies, this proposed reduction in regulatory requirements is not expected to adversely impact economic growth, private job sector employment, private sector investment, and business competitiveness during the five year period identified in the statute.

While the rule's waiver language regarding telecommunications companies' reimbursement for records located within 50 miles of the Florida state line would be eliminated with the proposed rule change, there is no statutory requirement for the waiver and no companies are expected to be affected by the proposed change. The rule waiver has benefitted such companies as Florala Telephone Company, Inc. (Florala) and Southland Telephone Company, two Alabama companies which kept their records within 50 miles of the state line. Florala was acquired in September 1997 by GTC, Inc. d/b/a Fairpoint Communications and its records have been relocated. Southland Telephone Company was acquired and moved its records in the early 1990's. No record reviews of local exchange companies by the Commission have taken place within the geographic zone in question since the acquisition of Florala. On the other hand, the waiver language contained in Rule 25-4.020(2)(b)1, F.A.C., allowing companies to make out-of-state records available within 10 working days from the Commission's request at an in-state location is commonly used.

The draft rule change to Rule 25-4.0201, F.A.C., to eliminate required access to affiliate records represents a lower level of regulatory requirement. For this reason, it is not expected to adversely impact economic growth, private job sector employment, private sector investment, and business competitiveness during the five year period identified in the statute.

#### Economic Analysis Showing Whether the Rules Are Likely to Increase Regulatory Costs In Excess of \$1 Million Within 5 Years

Subparagraph 120.541(2)(a)3, F.S., 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. Since the intent of both Rule 25-4.020, F.A.C., and Rule 25-4.0201, F.A.C., is to decrease regulatory requirements, regulatory costs should likewise decrease.

#### Estimated Number of Entities Required to Comply and General Description of Individuals Affected

Subparagraph 120.541(2)(b), F.S., 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 subsections (1), (3), and (4)

of Rule 25-4.020, F.A.C., includes 10 incumbent local exchange companies. Subsection (1) addresses location of records, subsection (3) addresses time period for the preservation of records, and subsection (4) addresses adequate accommodations during audits. The number of telecommunications companies that are required to comply with subsection (2) of Rule 25-4.020, F.A.C., includes 436 companies (comprised of 305 local exchange companies, 95 pay telephone companies, 20 shared tenant service providers, and 16 alternate access vendors). Subsection (2) addresses reimbursement of state travel expenses. The number of telecommunications companies which are required to comply with the Rule 25-4.0201, F.A.C., includes 10 incumbent local exchange companies.

#### Rule Implementation and Enforcement Costs and Impact on Revenues For The Agency and Other State and Local Government Entities

Section 120.541(2)(c), F.S., 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. Since draft changes to Rule 25-4.020(3), F.A.C., would remove the currently required preservation of a wide range of specified records, there is not expected to be any cost to the Commission of implementing and enforcing the draft rule change. There would be no impact on revenues to the Commission or other state and local government entities. Draft changes to Rule 25-4.0201, F.A.C. would not impact the cost or revenue to the Commission since audits of affiliate records are non-existent today and would remain so under the proposed rule.

#### Estimated Transactional Costs to Individuals and Entities

Section 120.541(2)(d), F.S., 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. The likely impact of the draft rule changes on incumbent local exchange companies is a reduction in regulatory costs. Regarding Rule 25-4.020(3), F.A.C., the companies will incur lower costs for record retention since many required documents will no longer have to be maintained for the time periods established by reference in the current rule. The draft changes to Rule 25-4.020(2) are expected to have no impact on any telecommunications companies. Regarding Rule 25-4.0201, F.A.C., the incumbent local exchange companies are not likely to have a significant change in costs incurred to accommodate Commission access to affiliate records since Commission auditors have not requested an audit of affiliate records for many years.

It is not known whether companies' lower costs associated with record retention under the proposed changes to Rule 25-4.020(3), F.A.C., would be flowed through, in whole or in part, to consumers, including individuals and local government entities. Draft changes to Rule 25-4.0201, F.A.C., would not impact the transactional costs to individuals or local government entities since audits of affiliate records are non-existent today and would remain so under the proposed rule.

Impact On Small Businesses, Small Cities, Or Small Counties

Section 120.541.(2)(e), F.S., requires an analysis of the impact of the proposed changes 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. In the event incumbent local exchange companies' lower costs associated with record retention under the proposed changes to Rule 25-4.020, F.A.C., are flowed through, in whole or in part, to small businesses, small cities, and small counties, in the form of lower rates, those entities would be benefitted. Draft changes to Rule 25-4.0201, F.A.C. would have no impact on small businesses, small cities, or small counties.

Additional Information Deemed Useful By The Agency

None.

cc: Braulio Baez  
Beth Salak  
Dale Mailhot  
Marshall Willis