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Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NO.: RULE TITLE:

25-4.004: Certificates of Public Convenience and Necessity

25-4.005: Transfer of Certificate of Public Convenience and Necessity As to All or Portion of Service Area

PURPOSE AND EFFECT: These rules are amended to implement statutory changes to chapter 364, FS, made by the Regulatory Reform Act of 2011.

Docket No. 120241-TP

SUMMARY: As a result of the amendments to chapter 364, FS, made by the Regulatory Reform Act of 2011, all applications concerning the granting and transfer of certificates of authority for all telecommunications companies, as defined by chapter 364, FS, will be regulated by Rules 25-4.004 and 25-4.005, F.A.C., and separate sets of rules on this topic for shared tenant service, alternative access vendor service, and competitive local exchange service are repealed. Rules 25-4.004 and 25-4.005 are amended in order to implement these changes by incorporating provisions necessary to regulate the granting and transfer of certificates of authority for all telecommunications companies.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based upon the information contained in the SERC.

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

RULEMAKING AUTHORITY: 350.127(2), FS

LAW IMPLEMENTED: 350.113, 350.127(1), 364.33, 364.335, 364.336, FS

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kathryn G. W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6216, kcowdery@psc.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

25-4.004 Certificates of ~~Public Convenience and Necessity or Authority~~; Application.

(1) No person shall provide telecommunications services to the public without either a certificate of necessity issued prior to July 1, 2011, or a certificate of authority issued after July 1, 2011. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate. However, marketing and development activities may begin prior to the effective date of the certificate at the applicant's risk that the certificate may not be granted. Prior to certification, the applicant must advise the public in any customer contacts or advertisements that certification has not and may not be granted.

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(2) Each applicant for a certificate of authority shall submit an application on Form PSC/TEL 162 (X/XX), entitled "Application Form for Authority to Provide Telecommunications Company Service Within the State of Florida," which is incorporated into this rule by reference and which is available at http://www.flrules.org/Gateway/reference.asp?No_Ref-XXXXX, from the Commission's website at www.floridapsc.com/utilities/telecomm/, or by contacting the Commission's Office of Telecommunications. A non-refundable application fee of \$500.00 must accompany the filing of each application.

(3) An application for certificate of authority shall be filed with the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

(4) Each holder of a certificate of necessity or authority shall file with the Commission's Office of Commission Clerk updated information for the following items within ten days after a change occurs:

(a) The street address of the certificate holder including number, street name, city, state and zip code, and the mailing address if it differs from the street address.

(b) Name, title, and phone number of the individual responsible for contact with the Commission.

Except as provided in Chapter 364, F.S., no person shall begin the construction or operation of any telephone line, plant or system or an extension thereof or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Florida Public Service Commission a certificate that the present or future public convenience and necessity require or will require such construction, operation or acquisition.

Rulemaking Authority 350.127(2) FS. Law Implemented 350.127(1), 364.33, 364.335, FS. History-Revised 12-1-68, Formerly 25-4.04, Amended _____.

25-4.005 Transfer of Certificate of Public Convenience and Necessity or Authority As to All or Portion of Service Area.

(1) Except as provided in section 364.33, F.S., a certificate holder and the person seeking to obtain the certificate by transfer from the holder shall submit a joint application on Commission Form PSC/TEL 162 (X/XX), entitled "Application Form for Authority to Provide Telecommunications Company Service Within the State of Florida," incorporated by reference into Rule 25-4.004, F.A.C. The application shall be filed with the Office of Commission Clerk. A nonrefundable application fee of \$500.00 must accompany the filing of each application to cover processing costs. The Commission's acceptance of the application fee does not imply that the application for transfer of a certificate will be granted.

(2) The company transferring the certificate shall pay to the Commission all regulatory assessment fees owed pursuant to sections 350.113 and 364.336, F.S., and Rule 25-4.0161, Florida Administrative Code.

(1) Request for approval by the Commission of transfer of any certificate of public convenience and necessity (or portion thereof) shall be made by joint petition of the certificate holder and transferee after reasonable notice has been given to all subscribers affected by the proposed transfer. Requests for approval shall be accompanied by an affidavit that notice of intention to file the petition has been given:

(a) By mail or personal delivery to the governing bodies of the counties and municipalities affected, to the public counsel, and to the Commission,

(b) By a legal advertisement in a newspaper of general circulation in the area affected and published on two (2) separate occasions at least two (2) weeks prior to the filing of the joint petition on the proposed transfer, and

(c) By written notice subject to Commission approval, issued to each subscriber in the area to be transferred concurrent with the filing of the petition.

(2) Upon approving a transfer of certificate, or portion thereof, the Commission will cancel same and reissue in the name of the transferee or amend the description of the service area or both.

(3) Such joint petitions shall include detailed descriptions of the affected boundaries; the number of subscribers, if any, in each petitioned area; changes in rates; service being provided by either petitioner in areas to be transferred; pending applications for service held by either petitioner; changes in calling scope; customers to be transferred; deposits and deposit interest; any financial exchange or consideration for the proposed change, and a list by name and telephone number of all customers who will be exempt from the proposed change.

(4) Any subscriber or group of subscribers of a telephone company may petition the Commission for transfer from the service area of such telephone company to that of another telephone company serving contiguous territory.

~~(5) If a customer survey is conducted by a telephone company among customers affected by the proposed transfer, return postage shall be paid by the company serving the affected customer and survey ballots shall be returnable to the Public Service Commission, Attention: Division of Regulatory Analysis, for tabulation. Rulemaking Authority 350.127(2) FS. Law Implemented 350.113, 364.335, 364.336 FS. History—New 12-1-68, Amended 5-4-81, Formerly 25-4.05, Amended 9-16-99, _____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE: Catherine Beard

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service
Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 16, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 38, Number
23, June 8, 2012.

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12187000	25-6.019,...	Notification of Accidents, Safety Standards for Construction of New Transmission and Distribution Facilities, Quarterly Reports of Work Orders and Safety Compliance, Meter Test - Referee	Proposed	10/23/2012 Vol. 38/56	10/22/2012
12186418	25-24.565,...	Certificate of Public Convenience and Necessity Required, Application for Certificate, Improper Use of a Certificate, Application for Approval of Sale, Assignment or Transfer of Certificate, Cancellation of a Certificate, Scope and Waiver, Terms and Definitions, Certificate of Public Convenience and Necessity Required, Application for Certificate, Certificates Not Transferable, Application for Approval of Sale, Assignment, or Transfer of Certificate, Cancellation of a Certificate, Records and Reports; Rules Incorporated, Scope, Certificate of Public Convenience and Necessity Required, Application for Certificate, Application for Approval of Sale, Assignment or Transfer of Certificate, Revocation of a Certificate	Proposed	10/23/2012 Vol. 38/56	10/22/2012
✓ 12185836	25-4.004,...	Certificates of Public Convenience and Necessity, Transfer of Certificate of Public Convenience and Necessity As to All or Portion of Service Area	Proposed	10/23/2012 Vol. 38/56	10/22/2012
12185933	10/22/2012	Florida Public Service Commission	Meeting	10/23/2012 Vol. 38/56	10/22/2012

Notices Confirmed by ACR

ID	Rule No./ Organization	Rule Title	Section	Issue	Date
		None			

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