

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** November 26, 2012  
**TO:** Ann Cole, Commission Clerk, Office of Commission Clerk  
**FROM:** Kathryn G. W. Cowdery, Office of the General Counsel  
**RE:** Docket No. 120241-TP

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RECEIVED FPSC  
12 NOV 26 PM 1:00  
COMMISSION  
CLERK

Please file the attached rule certification packet for Rules in the docket file listed above.

Thank you.

Attachment

DOCUMENT NUMBER DATE

07831 NOV 26 2012

FPSC-COMMISSION CLERK

COMMISSIONERS:  
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ART GRAHAM  
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JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL  
S. CURTIS KISER  
(850) 413-6199

Public Service Commission

November 26, 2012

Ms. Liz Cloud  
Florida Department of State  
Administrative Code and Weekly Section  
R. A. Gray Bldg., Suite 101  
Tallahassee, FL 32399-0250

Via Hand-Delivery

FILED  
2012 NOV 26 AM 10:46  
DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA

**Re: Rule Certification Packet for Rules 25-4.004 and 25-4.005, Florida Administrative Code.  
FPSC Docket No. 120241-TP**

Dear Ms. Cloud:

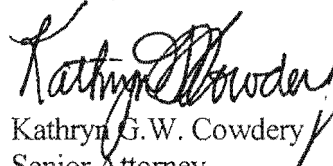
Enclosed for filing is a complete rule certification packet for Rules 25-4.004 and 25-4.005, Florida Administrative Code (F.A.C.), consisting of:

- (1) One compact disc containing the coded text of the rules;
- (2) The e-mail approval confirmation with the Certification of Materials Incorporated by Reference form required by Rule 1-1.013, F.A.C., for the materials incorporated by reference that were filed electronically;
- (3) One original and two copies of the signed rule certification forms;
- (4) One original and two copies of the coded text of the rules, including the legal citations and history notes;
- (5) One original and two copies of the summary of the rules;
- (6) One original and two copies of the detailed written statement of the facts and circumstances justifying the rules; and
- (7) One original and two copies of the summary of the hearings held on the rules.

Liz Cloud  
November 26, 2012  
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Please let me know if you have any questions. The contact name and information for these rules are Kathryn G.W. Cowdery, Florida Public Service Commission, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, 413-6216, [kcowdery@psc.fl.state.us](mailto:kcowdery@psc.fl.state.us).

Sincerely,

  
Kathryn G.W. Cowdery  
Senior Attorney

Enclosures

## Julie Phillips

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**From:** FL-Rules@dos.state.fl.us  
**Sent:** Friday, November 16, 2012 4:29 PM  
**To:** Julie Phillips  
**Cc:** firules@dos.state.fl.us  
**Subject:** 25-4.004 Reference Material for Rule Adoption Approved

Dear JPhillips:

The reference material for rule adoption you submitted has been approved by the Administrative Code and Register Staff.

The approved material is available in the [Review/Modify Agency Reference Material list](#) (Agency Main Menu page).

Rule Number: 25-4.004

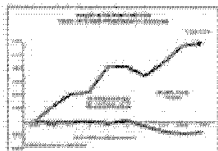
Reference Number: Ref-02034; Reference Name: PSC/TEL 162 (12/12)

Click [here](#) to log in.

Administrative Code and Register Staff  
Division of Library and Information Services  
Florida Department of State

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CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION  
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

[ ] (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule Nos.

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

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: \_\_\_\_\_  
(month) (day) (year)

  
\_\_\_\_\_  
ANN COLE

Commission Clerk  
Title \_\_\_\_\_  
Number of Pages Certified 3

CERTIFICATION OF MATERIALS INCORPORATED

BY REFERENCE IN RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify pursuant to Rule 1-1.013, Florida Administrative Code:

(1) That materials incorporated by reference in Rule 25-4.004, F.A.C. have been electronically filed with the Department of State.

(2) That because there would be a violation of federal copyright laws if the submitting agency filed the incorporated materials described below electronically, a true and complete paper copy of the incorporated materials are attached to this certification for filing. Paper copies of the incorporated materials below may be obtained at the agency by [include address(es)/location(s)].

List form number and form title, or title of document below:

Form PSC/TEL 162 (12/12), Application Form for Authority to Provide Telecommunications Company Service Within the State of Florida.

Under the provisions of Section 120.54(3)(e)6., F. S., the attached material(s) take effect 20 days from the date filed with the Department of State, or a later date as specified in the rule.



Ann Cole  
Commission Clerk

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.

(2) Each applicant for a certificate of authority shall submit an application on Form PSC/TEL 162 (12/12), 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-02034>, from the Commission's website at [www.floridapsc.com/utilities/telecomm/](http://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 (12/12), 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

~~(e) 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, \_\_\_\_\_.*

## SUMMARY OF THE RULES

Rule 25-24.004, Certificates of Public Convenience and Necessity, is amended to reference certificates of authority, to create one standard application form and \$500 application fee for certification of authority, and to incorporate certain rule requirements for applications for certificates of authority for shared tenant service, alternative access vendor service, and competitive local exchange companies.

Rule 25-24.005, Transfer of Certificate of Public Convenience and Necessity as to All or Portion of Service Area, is amended to reference certificates of authority; to adopt one standard application form and \$500 application fee for certificate transfers; to incorporate certain rule requirements relating to transfer of certificates for shared tenant service and alternative access vendor services; and to delete existing sections (1) – (5) as obsolete.

### WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULES

Rule 25-24.004, Certificates of Public Convenience and Necessity, is amended to delete current references to certificates of public convenience and necessity and instead reference certificates of authority, consistent with Section 364.33, Fla. Stat. The rule is amended in order to create one standard application form and \$500 application fee and to incorporate certain rule requirements for applications for certificates of authority for shared tenant service, alternative access vendor service, and competitive local exchange companies, consistent with changes to Chapter 364, F.S., resulting from the Regulatory Reform Act of 2011.

Rule 25-24.005, Transfer of Certificate of Public Convenience and Necessity as to All or Portion of Service Area, is amended to reference certificates of authority, consistent with Section 364.33, Fla. Stat.; to adopt one standard application form and \$500 application fee for certificate transfers; to incorporate certain rule requirements relating to transfer of certificates for shared tenant service and alternative access vendor services; and to delete existing sections (1) – (5) as obsolete, consistent with the statutory changes resulting from the Regulatory Reform Act of 2011.

### SUMMARY OF ANY HEARINGS HELD ON THE RULE

No timely request for a hearing was received by the agency, and no hearing was held.