

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: November 29, 2012
TO: Docket No. 120266-TP
FROM: Ann Cole, Commission Clerk, Office of Commission Clerk
RE: Rescheduled Commission Conference Agenda Item

A handwritten signature in black ink, appearing to read "Ann Cole".

Staff's memorandum assigned DN 07641-12 was filed on November 13, 2012, for the November 27, 2012, Commission Conference. As the vote sheet reflects, this item was deferred. Per the DN 07720-12 filing, this item has been placed on the December 10, 2012, Commission Conference Agenda..

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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: November 13, 2012

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Gervasi)
Office of Telecommunications (Bates)
Division of Economics (McNulty)

RE: Docket No. 120266-TP – Proposed amendment of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection, and proposed repeal of Rules 25-4.083, F.A.C., Preferred Carrier Freeze, and 25-24.845, F.A.C., Customer Relations.

AGENDA: 11/27/12 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: *All Commissioners - ac*

PREHEARING OFFICER: Balbis

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\120266.RCM.DOC

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Case Background

Rule 25-4.118, Florida Administrative Code (F.A.C), Local, Local Toll, and Toll Provider Selection, prohibits the change of a customer's telecommunications service provider without the authorization of the customer or other authorized person. The rule specifies what information must be included in a letter of agency authorizing a provider change, and sets forth the procedures to be followed for crediting charges for unauthorized provider changes and for changing customers back to their original provider or to another company of the customer's choice upon notice of an unauthorized provider change. The rule requires companies to provide certain disclosures when soliciting a change in service from a customer and to maintain a toll-free number for accepting complaints regarding unauthorized provider changes. The rule also

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provides the conditions under which a provider is not deemed to have committed an unauthorized carrier change, and specifies certain mitigating factors the Commission considers in determining whether fines or other remedies are appropriate for unauthorized carrier infractions.

Staff is recommending that Rule 25-4.118, F.A.C., be amended to comply with recent changes made to Chapter 364, Florida Statutes (F.S.), such that the rule will apply to all providers of local telecommunications service rather than only to incumbent local exchange companies, and references to toll providers (IXCs) will be removed. The recommended rule amendments fully capture the mandates of section 364.16(5), F.S., relating to unauthorized changes of a subscriber's local telecommunications service and preferred carrier freezes, and incorporate the provisions of Rule 25-4.083, F.A.C., Preferred Carrier Freeze.

Rule 25-4.083, F.A.C., Preferred Carrier Freeze, requires local providers to make available a preferred carrier freeze upon a subscriber's request, that a preferred carrier freeze shall not be required as a condition for obtaining service and shall be implemented or removed at no charge to the subscriber, and that local providers shall meet the requirements prescribed by the Federal Communications Commission (FCC) in Title 47, Code of Federal Regulations, Part 64, Section 64.1190, Preferred Carrier Freeze. Because the recommended amendments to Rule 25-4.118, F.A.C., incorporate the provisions of this rule, staff is recommending that Rule 25-4.083, F.A.C., should be repealed.

Rule 25-24.845, F.A.C., Customer Relations, specifies that the acronym "LEC" should be omitted or interpreted as "CLEC" in Rule 25-4.082, F.A.C., Number Portability, Rule 25-4.083, F.A.C., Preferred Carrier Freeze, Rule 25-4.110(11), (12), (14), (15), (16), (17), (18), and (20), F.A.C., Customer Billing, and Rule 24-4.118, Local, Local Toll, or Toll Provider Selection. Staff is recommending that Rule 25-24.845, F.A.C., be repealed, consistent with the 2011 changes made to Chapter 364, F.S.

The Commission's Notices of Development of Rulemaking were published on November 10, 2011, in Volume 37, Number 45, and on October 26, 2012, in Volume 38, Number 59, of the Florida Administrative Register. A rule development workshop was conducted on December 5, 2011. Various interested persons participated, including representatives of several telecommunications companies and Florida Cable Telecommunications Association, which provides digital home phone service in addition to cable and internet. Post-workshop comments were submitted on December 19, 2011, from tw telecom of florida l.p. (TWTC). The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), 364.01, 364.16(5), and 364.285, F.S.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection, and the repeal of Rules 25-4.083, F.A.C., Preferred Carrier Freeze, and 25-24.845, F.A.C., Customer Relations?

Recommendation: Yes, the Commission should propose the amendment of Rule 25-4.118, F.A.C., and the repeal of Rules 25-4.083 and 25-24.845, F.A.C., as set forth in Attachment A of this recommendation. (Gervasi, Bates)

Staff Analysis:

Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection

Staff is recommending that Rule 25-4.118, F.A.C., be amended to comply with recent changes made to Chapter 364, F.S., such that the rule will apply to all providers of local telecommunications service rather than only to incumbent local exchange companies (Attachment A, page 7, lines 3-8), and references to toll providers (IXCs) will be removed (Attachment A, page 7, lines 17-19). The recommended rule amendments will fully capture the mandates of section 364.16(5), F.S., relating to unauthorized changes of a subscriber's local telecommunications service and preferred carrier freezes. As required by section 364.16(5), the recommended amendments are consistent with the Telecommunications Act of 1996¹ and provide for specific verification methods (Attachment A, page 7, lines 1-8, on which FCC Rule 64.1120, Verification of Orders for Telecommunications Service, among other FCC rules, is incorporated by reference). Staff recommends adopting these FCC rules for consistency and efficiency purposes, rather than requiring the companies to comply with two separate sets of rules. Moreover, section 364.16(5), F.S., and the recommended rule amendments provide for subscriber notification regarding a preferred carrier freeze at no charge (Attachment A, page 11, lines 22-25 through page 12, line 1), and allow for a subscriber's change to be considered valid if verification is performed consistent with Commission rules (Attachment A, page 7, lines 15-24). Finally, the recommended rule amendments provide remedies for violations of the rule and allow for the imposition of other penalties available under Chapter 364, F.S., as also required by section 364.16(5), F.S. (Attachment A, page 7, line 25 through page 8, lines 1-22).

The recommended rule amendments incorporate the provisions of Rule 25-4.083, F.A.C. Local providers are required to make available a preferred carrier freeze upon a subscriber's request and to meet the requirements prescribed by the FCC in Title 47, Code of Federal Regulations, Part 64, Section 64.1190, Preferred Carrier Freeze (Attachment A, page 10, lines 21-25). And a preferred carrier freeze shall not be required as a condition for obtaining service and shall be implemented or removed at no charge to the subscriber (Attachment A, page 11, lines 17-20).

¹ 47 U.S.C. §258(a) of the Act states that "[n]o telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services."

In its post-workshop comments with respect to recommended Rule 25-4.118, TWTC reiterated its concern expressed at the workshop that staff's designs for paragraphs (2)(a) and (2)(b) were not sufficiently clear. TWTC suggests certain rule language to be added at the beginning of paragraph (2)(b), in order to clarify that paragraph (2)(b) will only apply in cases where a company fails to meet the requirements of paragraph (2)(a). Staff agrees, and has added language similar to TWTC's suggested language at the beginning of paragraph (2)(b) of the draft rule to make the suggested clarification. (Attachment A, page 7, line 25 through page 8, lines 1-3). TWTC also suggests language to be added at the end of paragraph (7), to allow preferred carrier freeze notifications to be provided by a standard sized message on a customer's bill. Staff agrees, and has included the suggested language in the recommended rule. (Attachment A, page 11, line 25 through page 12, line 1.)

Rule 25-4.083, Preferred Carrier Freeze

Because the recommended amendments to Rule 25-4.118, F.A.C., incorporate the provisions of this rule as addressed above, staff is recommending that Rule 25-4.083, F.A.C., should be repealed.

Rule 25-24.845, F.A.C., Customer Relations

Rule 25-24.845, F.A.C., Customer Relations, applies to competitive local exchange companies (CLECs). This rule specifies that the acronym "LEC" should be omitted or interpreted as "CLEC" in Rule 25-4.082, F.A.C., Number Portability, Rule 25-4.083, F.A.C., Preferred Carrier Freeze, Rule 25-4.110(11), (12), (14), (15), (16), (17), (18), and (20), F.A.C., Customer Billing, and Rule 24-4.118, Local, Local Toll, or Toll Provider Selection. Staff is recommending that Rule 25-24.845, F.A.C., be repealed, consistent with the 2011 changes made to Chapter 364, F.S. This rule is obsolete because by its terms, Rule 25-4.082, F.A.C., applies to all local providers, Rule 25-4.110, F.A.C., has been repealed, and staff is recommending in this docket that Rules 25-4.118 and 25-4.083, F.A.C., should be amended and repealed, respectively.

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 in excess of \$1 million in the aggregate within five years after the implementation of the recommended amendment to Rule 25-4.118, F.A.C., and that the recommended repeal of Rules 25-4.083 and 25-24.845, F.A.C., are unlikely to have any adverse impacts on either economic growth or business competitiveness within five years after implementation. Based on the SERC, the recommended rules 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.

Conclusion

Based on the foregoing, staff recommends that the Commission propose the amendment of Rule 25-4.118 and the repeal of Rules 25-4.083 and 25-24.845, F.A.C., as set forth in Attachment A of this recommendation.

Docket No. 120266-TP
Date: November 13, 2012

Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or comments are filed, the amendment of Rule 25-4.118, F.A.C., and the repeal of Rules 25-4.083 and 25-24.845, F.A.C., as proposed, should be filed for adoption with the Secretary of State and the docket should be closed.

Staff Analysis: Unless comments or requests for hearing are filed, the amendment of Rule 25-4.118, and the repeal of Rules 25-4.083 and 25-24.845, as proposed, may be filed with the Secretary of State without further Commission action. The docket may then be closed.

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 telecommunications company shall meet the requirements as prescribed by the
4 Federal Communications Commission in Title 47, Code of Federal Regulations, Part 64,
5 Subpart K, Sections 64.1100 Definitions, as amended March 1, 2001, 64.1120 Verification of
6 Orders for Telecommunications Service, as amended March 12, 2008, and 64.1130 Letter of
7 Agency Form and Content, as amended March 12, 2008, which are hereby incorporated into
8 this rule by reference. The provider of a customer shall not be changed without the customer's
9 authorization. The customer or other authorized person may change the residential service. For
10 the purposes of this section, the term "other authorized person" shall mean a person 18 years
11 of age or older within the same household. The person designated as the contact for the local
12 telecommunications company, an officer of the company, or the owner of the company is the
13 person authorized to change business service. A LEC shall accept a provider change request
14 by telephone call or letter directly from its customers; or

15 (2)(a) A telecommunications company shall not be deemed to have committed an
16 unauthorized carrier change infraction if the company, including its agents and contractors,
17 did the following: A LEC shall accept a change request from a certified LP or IXC acting on
18 behalf of the customer. A certificated LP or IXC shall submit a change request only if it has
19 first certified to the LEC 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) in good faith, with respect to
23 the person requesting the change; and

24 2. Complied with the credit procedures of subsection (3).

25 (b) In cases where a company fails to meet the requirements of (2)(a), the Commission

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1 will determine whether penalties or other remedies are appropriate for an unauthorized carrier
2 change infraction. In so doing, the Commission will consider the actions taken by the
3 company to mitigate or undo the effects of the unauthorized change. These actions will
4 include whether the company, including its agents and contractors: ~~The provider has received~~
5 ~~a customer initiated call, and beginning six months after the effective date of this rule has~~
6 ~~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~~
11 ~~at least 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 carrier changes concurrently affecting a large number of
20 customers; and

21 6. Took other corrective action to remedy the unauthorized change appropriate under
22 the circumstances.

23 ~~(e) A firm that is independent and unaffiliated with the provider claiming the~~
24 ~~subscriber has 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~~

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1 notified 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~~

5 ~~mailing 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~~

7 ~~change the customer's telecommunications provider was obtained;~~

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

9 ~~e. 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~~

13 ~~changed to the soliciting company only if the customer signs and returns the postcard~~

14 ~~confirming the change; and~~

15 ~~f. A notice that the customer may contact by writing the Commission's Division of~~

16 ~~Service, Safety and Consumer Assistance, 2540 Shumard Oak Boulevard, Tallahassee, Florida~~

17 ~~32399-0850, or by calling, toll-free (TDD & Voice) 1 (800) 342-3552, for consumer~~

18 ~~complaints.~~

19 ~~2. The soliciting company shall submit the change request to the LP only if it has first~~

20 ~~received the postcard that must be signed by the customer.~~

21 (3)(a) Charges for unauthorized carrier changes billed on behalf of the unauthorized

22 carrier for the first 30 days or first billing cycle, whichever is longer, shall be credited to the

23 customer by the company responsible for the error within 45 days of notification to the

24 company by the customer, unless the claim is false. Upon notice from the customer of an

25 unauthorized carrier change, the telecommunications company shall change the customer

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1 back, or to another company of the customer's choice. The LOA submitted to the company
2 ~~requesting a provider change shall include the following information (Each shall be separately~~
3 ~~stated):~~

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

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

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

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

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

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

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

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

21 (4) A telecommunications company shall make available a preferred carrier freeze
22 upon a subscriber's request and shall meet the requirements as prescribed by the Federal
23 Communications Commission in Title 47, Code of Federal Regulations, Part 64, Subpart K,
24 Section 64.1190, Preferred Carrier Freeze, as amended March 12, 2008, which is hereby
25 incorporated into this rule by reference. ~~The LOA shall not be combined with inducements of~~

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

17 (5) A preferred carrier freeze shall not be required as a condition for obtaining service.
18 ~~A prospective provider must have received the signed LOA before initiating the change.~~

19 (6) A preferred carrier freeze shall be implemented or removed at no charge to the
20 subscriber. Information obtained under paragraphs (2)(a) through (d) shall be maintained by
21 the provider for a period of one year.

22 (7) A telecommunications company shall provide notification to subscribers with the
23 customer’s first bill, by letter or by electronic communication, and annually thereafter, that a
24 preferred carrier freeze is available at no charge. Existing customers shall be notified annually
25 that a preferred carrier freeze is available at no charge. Any of the foregoing notifications may

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1 be provided by a standard sized message on a customer's bill. ~~Customer requests for other~~
2 ~~services, such as travel card service, do not constitute a provider change.~~

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

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

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

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

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

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

23 ~~1. Any nonrecurring charge;~~

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

25 ~~3. Company deposit practices;~~

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- 1 ~~4. Any charge applicable to call attempts not answered;~~
2 ~~5. A statement of when charging for a call begins and ends; and~~
3 ~~6. A statement of billing adjustment practices for wrong numbers or incorrect bills.~~
4 ~~(10) During telemarketing and verification, no misleading or deceptive references shall~~
5 ~~be made while soliciting for subscribers.~~
6 ~~(11) A provider must provide the customer a copy of the authorization it relies upon in~~
7 ~~submitting the change request within 15 calendar days of request.~~
8 ~~(12) Each provider shall maintain a toll free number for accepting complaints~~
9 ~~regarding unauthorized provider changes, which may be separate from its other customer~~
10 ~~service numbers, and must be answered 24 hours a day, seven days a week. If the number is a~~
11 ~~separate toll free number, beginning six months after the effective date of this rule new~~
12 ~~customers must be notified of the number in the information package provided to new~~
13 ~~customers or on their first bill. The number shall provide a live operator or shall record end~~
14 ~~user complaints made to the customer service number to answer incoming calls. A~~
15 ~~combination of live operators and recorders may be used. If a recorder is used, the company~~
16 ~~shall attempt to contact each complainant no later than the next business day following the~~
17 ~~date of recording and for three subsequent days unless the customer is reached. If the customer~~
18 ~~is not reached, the company shall send a letter to the customer's billing address informing the~~
19 ~~customer as to the best time the customer should call or provide an address to which~~
20 ~~correspondence should be sent to the company. Beginning six months after the effective date~~
21 ~~of this rule, a minimum of 95 percent of all call attempts shall be transferred by the system to~~
22 ~~a live attendant or recording device prepared to give immediate assistance within 60 seconds~~
23 ~~after the last digit of the telephone number listed as the customer service number for~~
24 ~~unauthorized provider change complaints was dialed; provided that if the call is completed~~
25 ~~within 15 seconds to an interactive, menu driven, voice response unit, the 60-second answer~~

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1 ~~time shall be measured from the point at which the customer selects a menu option to be~~
2 ~~connected to a live attendant. Station busies will not be counted as completed calls. The term~~
3 ~~“answer” as used in this subsection means more than an acknowledgment that the customer is~~
4 ~~waiting on the line. It shall mean the provider is ready to render assistance or accept the~~
5 ~~information necessary to process the call.~~

6 ~~(13)(a) A company shall not be deemed to have committed an unauthorized carrier~~
7 ~~change infraction if the company, including its agents and contractors, did the following:~~

8 ~~1. Followed the procedures required under subsection (2) with respect to the person~~
9 ~~requesting the change;~~

10 ~~2. Followed these procedures in good faith; and~~

11 ~~3. Complied with the credit procedures of subsection (8).~~

12 ~~(b) In determining whether fines or other remedies are appropriate for an unauthorized~~
13 ~~carrier change infraction, the Commission shall consider the actions taken by the company to~~
14 ~~mitigate or undo the effects of the unauthorized change. These actions include but are not~~
15 ~~limited to whether the company, including its agents and contractors:~~

16 ~~1. Followed the procedures required under subsection (2) with respect to the person~~
17 ~~requesting the change in good faith;~~

18 ~~2. Complied with the credit procedures of subsection (8);~~

19 ~~3. Took prompt action in response to the unauthorized change;~~

20 ~~4. Reported to the Commission any unusual circumstances that might have adversely~~
21 ~~affected customers such as system errors or inappropriate marketing practices that resulted in~~
22 ~~unauthorized changes and the remedial action taken;~~

23 ~~5. Reported any unauthorized provider changes concurrently affecting a large number~~
24 ~~of customers; or~~

25 ~~6. Took other corrective action to remedy the unauthorized change appropriate under~~

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1 | ~~the circumstances.~~
2 | *Rulemaking Authority 350.127(2), 364.01, 364.16(5) FS. Law Implemented 364.01, 364.16(5),*
3 | *~~364.19, 364.285, 364.603~~ FS. History—New 3-4-92, Amended 5-31-95, 12-28-98, 5-8-05, XX-*
4 | *XX-XX.*
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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~~

6 ~~provider shall meet the requirements as prescribed by the Federal Communications~~

7 ~~Commission in Title 47, Code of Federal Regulations, Part 64, Section 64.1190, Preferred~~

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

9 ~~reference.~~

10 *Rulemaking Authority 350.127, 364.01, 364.603 FS. Law Implemented 364.01, 364.603 FS.*

11 *History—New 9-9-04, Amended 10-21-09, Repealed XX-XX-XX.*

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

1 **25-24.845 Customer Relations.**

2 ~~The following rules apply to CLECs. In the following rules, the acronym “LEC” should be~~
3 ~~omitted or interpreted as “CLEC”.~~

4 ~~Section Title — Portions Applicable~~

5 ~~25 4.082 — Number Portability — All~~

6 ~~25 4.083 — Preferred Carrier Freeze — All~~

7 ~~25 4.110 — Customer Billing — Subsections (11), (12), (14), (15), (16), (17),~~
8 ~~(18), and (20)~~

9 ~~24 4.118 — Local, Local Toll, or Toll Provider Selection All~~

10 *Rulemaking Authority 350.127(2), 364.337(2), 364.604(5) FS. Law Implemented 364.16,*
11 *364.337(2), 364.602, 364.603, 364.604 FS. History—New 12-28-98, Amended 7-5-00, 11-16-*
12 *03, 9-9-04, Repealed XX-XX-XX.*

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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: November 6, 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 Amendment to Rule 25-4.118, F.A.C., and Proposed Repeal of Rules 25-4.083 and 25-24.845, F.A.C.

Summary of Rules

Rule 25-4.118, Florida Administrative Code (F.A.C.), Local, Local Toll, and Toll Provider Selection, prohibits the change of a customer's telecommunications service provider without the customer's authorization and identifies the following:

- which type of entities may provide such authorization;
- what information must be included in a letter of agency authorizing a provider change;
- procedures for changing customers back to their original provider after notification of unauthorized change and for crediting charges for unauthorized provider changes to the customer; and
- conditions under which a provider is not deemed to have committed an unauthorized carrier change.

The draft changes to Rule 25-4.118, F.A.C., (the draft rule amendment) would incorporate the substance of Rule 25-4.083, F.A.C., Preferred Carrier Freeze (PC-Freeze), into Rule 25-4.118, F.A.C. Rule 25-4.083, F.A.C., requires that:

- local providers make available a PC freeze upon a subscriber's request;
- a PC freeze shall not be required as a condition for obtaining service;
- no charges will be assessed customers for implementing or removing PC-Freezes; and
- local providers shall meet the requirements of the Federal Communications Commission in Title 47, Code of Federal Regulation, Part 64, Section 64.1190, Preferred Carrier Freeze, revised October 1, 2007.

The draft changes to Rule 25-4.118, F.A.C., also include a requirement that local service providers shall provide notification to subscribers of the ability to obtain a PC-Freeze, at no charge, with the customer's first bill and annually thereafter. PC-Freeze notification at no charge is required by Section 364.16(5), Florida Statutes (F.S.).

Rule 25-24.845, F.A.C., Customer Relations, identifies four rules which apply to competitive local exchange carriers, or CLECs. Rule 25-24.845, F.A.C., contains no other provisions and is recommended for proposed repeal. Rule 25-24.845, F.A.C., is obsolete due to the following circumstances pertaining to the rules it references;

- the rule has been repealed (Rule 25-4.110, F.A.C.),
- the rule is currently recommended for repeal in this recommendation (Rule 25-4.083, F.A.C.),
- the rule is applicable, by its terms, to all local service providers (Rule 25-4.082, F.A.C.), or
- the draft amendment to the rule is applicable, by its terms, to all local service providers (Rule 25-4.118, F.A.C.).

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, 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.

Regulatory costs include both estimated transactional costs and estimated cost to the agency. Since the intent of the draft changes to Rule 25-4.118, F.A.C., is to incorporate the substance of an existing rule, regulatory costs should be largely unaffected. As discussed in the section entitled "Estimated Transactional Costs to Individual and Entities," the estimated transactional costs by CLECs and ILECs required to comply with the requirements of the draft rule amendment is \$75,620 during the five years following the implementation of the rule. As discussed in the section entitled "Rule Implementation and Enforcement Costs," there are no estimated agency costs associated with the draft rule amendment.

Based on this analysis, the draft amendment to Rule 25-4.118, F.A.C., is not 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 draft rule amendment.

No increase in regulatory costs are associated with the draft repeals of Rules 25-4.083 and 25-24.845, F.A.C.

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, 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, Section 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.

The main intent of the draft amendment to Rule 25-4.118, F.A.C., is to incorporate the substance of an existing rule. Subparagraph 25-4.118(7) of the draft rule amendment, pertaining to PC-Freeze notification, may increase the cost to some CLECs and ILECs by a estimated total of \$75,620 over the five years following the implementation of the rule. If the draft rule amendment becomes effective, small business customers, small counties, and small cities are expected to experience only minimal impacts, if any. Thus, the draft rule amendment is unlikely to have adverse impacts on either economic growth or 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.

The draft repeals of Rules 25-4.083 and 25-24.845, F.A.C., are unlikely to have any adverse impacts on either economic growth or business competitiveness within 5 years after the implementation of the rule.

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

Section 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 would be required to comply with the draft amendment to Rule 25-4.118, F.A.C., include 313 telecommunications companies, which consist of 10 incumbent local exchange companies (ILECs), 286 competitive local exchange companies (CLECs), and 17 local providers.

The draft repeals of Rules 25-4.083 and 25-24.845, F.A.C., would eliminate all compliance requirements on the part of all 313 telecommunication companies for those specific rules.

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. No incremental costs are associated with the draft amendment to Rule 25-4.118, F.A.C., because the provisions of the amendment reflect current requirements, with the exception of the PC-Freeze notification requirement, which is expected to require only minimal staff time to implement and enforce. The draft amendment to Rule 25-4.118, F.A.C., is not expected to have any impact on state or local revenues.

No rule implementation and enforcement costs are associated with the draft repeals of Rules 25-4.083 and 25-24.845, F.A.C. The draft rule repeals are not expected to have any impact on state or local revenues.

Estimated Transactional Costs to Individual 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. Since the intent of the draft amendment to Rule 25-4.118, F.A.C., is to incorporate the substance of an existing rule, transactional costs should be largely unaffected. However, draft Subparagraph 25-4.118(7) of the draft rule contains PC-Freeze notification requirements for CLECs that do not appear in existing rules, with certain transactional cost impacts.

The draft amended rule section states, "A local service provider shall provide notification to subscribers of the ability to freeze the subscriber's choice of carriers, at no charge, with the customer's first bill, via letter, or by electronic communications, and annually thereafter that a PC-Freeze is available at no charge. Existing customers shall be notified annually that a PC-Freeze is available at no charge." Section 364.15(5), F.S., requires PC-Freeze notification at no charge for both CLECs and ILECs, but the specifics of the draft rule amendment requiring both first bill notification and annual notifications are not otherwise contained in a rule at this time. Rule 25-4.110(13), F.A.C., contained the notification requirement of a PC-Freeze at no charge, including first bill and annual notifications for ILECs. However, Rule 25-4.110, F.A.C., was repealed in its entirety in 2011.

Staff issued a data request to CLECs and ILECs on April 17, 2012, to collect information about the cost impact of Subparagraph 25-4.118(7) of the draft rule amendment regarding PC-Freeze notification. Forty-five CLECs providing service in Florida responded to the PC-Freeze notification data request out of the 295 CLECs certificated in Florida at the time staff's data requests were issued. Thirty-six of the 45 responding CLECs indicated that the draft rule section would result in minimal cost, no cost, or costs less than \$1,000 over the five year period following the effective date of the rule. Six CLECs reported total five year costs of \$1,000 or more. The remaining three CLECs reported that they either did not know what the costs would be (two CLECs) or they couldn't estimate the cost (one CLEC).

Seven of ten ILECs responded to staff's data request. The seven reporting ILECs estimated that the draft rule section would result in no increase in cost or minimal/insignificant increase in cost over the five year period following the effective date of the rule. The total estimated transactional cost of the draft rule amendment by reporting CLECs and ILECs required to comply with the requirements of the draft rule amendment is \$75,620.

No transactional costs are associated with the draft repeals of Rules 25-4.083 and 25-24.845, F.A.C.

Impact On Small Businesses, Small Counties, Or Small Cities

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. Since the intent of the draft amendment to Rule 25-4.118, F.A.C., is mainly to incorporate the substance of an existing rule, the draft rule is expected to have minimal, if any, impact on small businesses, small counties, and small cities. CLECs and ILECs indicate that Subparagraph 25-4.118(7) of the draft rule amendment, including modifications to the PC-Freeze notification requirements, will have minimal, if any, impact on small business customers, small counties, or small cities.

No impacts on small businesses, small counties, or small cities are expected to result from the draft repeals of Rules 25-4.083 and 25-24.845, F.A.C.

Additional Information Deemed Useful By The Agency

None.

cc: Beth Salak
Mark Long
Dale Mailhot
Jim Dean