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Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NO.: RULE TITLE:

25-4.083: Preferred Carrier Freeze

25-4.118: Local, Local Toll, or Toll Provider Selection

PURPOSE AND EFFECT: Rule 25-4.083 would be repealed and the substance of Rule 25-4.083 would be incorporated into Rule 25-4.118. Rule 25-4.118 would be amended to incorporate the substance of Rule 25-4.083, and to otherwise comply with recent changes to section 364.16(5), FS. The amendments to Rule 25-4.118 would apply to all providers of local telecommunications service, be consistent with the Telecommunications Act of 1996, provide for specific verification methods, provide for subscriber notification regarding a preferred carrier freeze at no charge, allow for a subscriber's change to be considered valid if verification is performed consistent with Commission rules, and provide remedies for violations of the rule and allow for the imposition of other penalties available under Chapter 364, FS.

Docket No. 120266-TP

SUMMARY: Rule 25-4.083 requires local providers to make a preferred carrier freeze available at no charge upon a subscriber's request, prohibits local providers from requiring a preferred carrier freeze as a condition for obtaining service, and requires local providers to meet the requirements of Title 47, Code of Federal Regulations, Part 64, Section 64.1190, revised as of October 1, 2007. These provisions would be included in Rule 25-4.118, and the reference to the federal rule would be updated. In order to implement recent changes made to Chapter 364, FS, Rule 25-4.118 would also be amended to remove the requirements concerning carrier change requests from certified local providers or interexchange carriers, and concerning the maintenance of a toll-free number for accepting complaints regarding unauthorized provider changes.

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, 364.01, 364.16(5), FS

LAW IMPLEMENTED: 364.01, 364.16(5), 364.285, 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: Rosanne Gervasi, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6224, rgervasi@psc.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS:

DOCUMENT NUMBER-DATE

08097 DEC 12 2012

FPSC-COMMISSION CLERK

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

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

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

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

1. Followed the procedures required under subsection (1) in good faith, with respect to the person requesting the change; and

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

(b) In cases where a company fails to meet the requirements of (2)(a), the Commission will determine whether penalties or other remedies are appropriate for an unauthorized carrier change infraction. In so doing, the Commission will consider the actions taken by the company to mitigate or undo the effects of the unauthorized change. These actions will include whether the company, including its agents and contractors: The provider has received a customer-initiated call, and beginning six months after the effective date of this rule has obtained the following:

1. Followed the procedures required under subsection (1) with respect to the person requesting the change in good faith; The information set forth in subparagraphs (3)(a)1. through 5.; and

2. Complied with the credit procedures of subsection (3); Verification data including at least one of the following:

a. The customer's date of birth;

b. The last four digits of the customer's social security number; or

c. The customer's mother's maiden name.

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

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

5. Reported any unauthorized carrier changes concurrently affecting a large number of customers;

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

(c) A firm that is independent and unaffiliated with the provider claiming the subscriber has verified the customer's requested change by obtaining the following:

1. The customer's consent to record the requested change or the customer has been notified that the call will be recorded; and

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

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

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

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

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

d. A postcard which the customer can use to confirm a change request;
e. A clear statement that the customer's local, local toll, or toll provider will be changed to the soliciting company only if the customer signs and returns the postcard confirming the change; and
f. A notice that the customer may contact by writing the Commission's Division of Service, Safety and Consumer Assistance, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, or by calling, toll-free (TDD & Voice) 1 (800) 342-3552, for consumer complaints.

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

(3)(a) Charges for unauthorized carrier changes billed on behalf of the unauthorized carrier for the first 30 days or first billing cycle, whichever is longer, shall be credited to the customer by the company responsible for the error within 45 days of notification to the company by the customer, unless the claim is false. Upon notice from the customer of an unauthorized carrier change, the telecommunications company shall change the customer back, or to another company of the customer's choice. The LOA submitted to the company requesting a provider change shall include the following information (Each shall be separately stated):

1. Customer's billing name, address, and each telephone number to be changed;
2. Statement clearly identifying the certificated name of the provider and the service to which the customer wishes to subscribe, whether or not it uses the facilities of another company;
3. Statement that the person requesting the change is authorized to request the change;
4. Statement that the customer's change request will apply only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number;
5. Statement that the LEC may charge a fee for each provider change;
6. Customer's signature and a statement that the customer's signature or endorsement on the document will result in a change of the customer's provider.

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

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

(4) A telecommunications company shall make available a preferred carrier freeze upon a subscriber's request and shall meet the requirements as prescribed by the Federal Communications Commission in Title 47, Code of Federal Regulations, Part 64, Subpart K, Section 64.1190, Preferred Carrier Freeze, as amended March 12, 2008, which is hereby incorporated into this rule by reference. The LOA shall not be combined with inducements of any kind on the same document. The document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document or oral statements, it would not be readily apparent to the person signing the document or providing oral authorization that the purpose of the signature or the oral authorization was to authorize a provider change, or it would be unclear to the customer who the new provider would be; that the customer's selection would apply only to the number listed and there could only be one long distance service provider for that number; or that the customer's LP might charge a fee to switch service providers. If any part of the LOA is written in a language other than English, then it must contain all relevant information in each language. Notwithstanding the above, the LOA may be combined with checks that contain only the required LOA language as prescribed in subsection (3) of this section and the information necessary to make the check a negotiable instrument. The LOA check shall not contain any promotional language or material. The LOA check shall contain in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary carrier change by signing the check. The LOA language shall be placed near the signature line on the back of the check.

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

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

(7) A telecommunications company shall provide notification to subscribers with the customer's first bill, by letter or by electronic communication, and annually thereafter, that a preferred carrier freeze is available at no charge. Existing customers shall be notified annually that a preferred carrier freeze is available at no charge. Any of the foregoing notifications may be provided by a standard sized message on a customer's bill. ~~Customer requests for other services, such as travel card service, do not constitute a provider change.~~

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

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

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

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

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

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

~~1. Any nonrecurring charge;~~

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

~~3. Company deposit practices;~~

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

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

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

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

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

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

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

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

2. Followed these procedures in good faith; and

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

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

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

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

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

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

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

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

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

25-4.083 Preferred Carrier Freeze.

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

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

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

(4) In addition to the requirements listed in subsections (1) through (3) above, a local provider shall meet the requirements as prescribed by the Federal Communications Commission in Title 47, Code of Federal Regulations, Part 64, Section 64.1190, Preferred Carrier Freeze, revised as of October 1, 2007, which is hereby incorporated into this rule by reference.

Rulemaking Authority 350.127, 364.01, 364.603 FS. Law Implemented 364.01, 364.603 FS. History—New 9-9-04, Amended 10-21-09, Repealed XX-XX-XX.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jeff Bates

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 10, 2012


DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 38, Number 59, October 26, 2012; Volume 37, Number 45, November 10, 2011

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Notices Submitted to/Confirmed by Administrative Code & Register Staff

[Notices Confirmed by ACR](#)

Notices Submitted to ACR

ID	Rule No./ Organization	Rule Title	Section	Issue	Date
12387887	25-24.845	Customer Relations	Proposed	12/13/2012 Vol. 38/90	12/12/2012
 12387596	25-4.083,...	Preferred Carrier Freeze, Local, Local Toll, or Toll Provider Selection	Proposed	12/13/2012 Vol. 38/90	12/12/2012
12386335	25-6.050,...	Location of Meters, Customer Billings	Proposed	12/13/2012 Vol. 38/90	12/12/2012
12387305	25-24.825	Price List	Proposed	12/13/2012 Vol. 38/90	12/12/2012
12387111	25-4.034,...	Tariffs, Filing of Service Schedules	Proposed	12/13/2012 Vol. 38/90	12/12/2012
12386917	25-24.510,...	Certificate of Public Convenience and Necessity Required, Application for Certificate, Application for Approval of Sale, Assignment or Transfer of Certificate, Cancellation of a Certificate, Pay Telephone Service	Proposed	12/13/2012 Vol. 38/90	12/12/2012
12386141	25-7.0851,...	Backbilling, Unauthorized Use of Gas	Proposed	12/13/2012 Vol. 38/90	12/12/2012
12385559	25-24.585,...	Rules Incorporated, Rules Incorporated	Proposed	12/13/2012 Vol. 38/90	12/12/2012
12385365	25-4.0051	Certificate Holder Information	Proposed	12/13/2012 Vol. 38/90	12/12/2012

Notices Confirmed by ACR

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

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