

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-**

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**DATE:** February 26, 2019  
**TO:** Adam J. Teitzman, Commission Clerk, Office of Commission Clerk  
**FROM:** Samantha Cibula , Office of the General Counsel  
**RE:** Docket No. 2010774-TP

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Please file the attached materials in the docket file listed above.

Thank you.

Attachment

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COMMISSION  
M. FRANK

State of Florida



Public Service Commission  
-M-E-M-O-R-A-N-D-U-M-

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**DATE:** August 1, 2002  
**TO:** Craig Hewitt, Division of Competitive Markets and Enforcement  
Paul Stallcup, Division of Competitive Markets and Enforcement  
**FROM:** Martha Carter Brown, Office of General Counsel *MCB*  
**RE:** SERC for Rules 25-4.1105, Notice to Customers Prior to Increase in Rates or Charges,  
and Rules 25-24. 490 and 25-24.845, incorporating Rule 25-4.1105 by reference

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Attached is the final draft of Rules 25-4.1105, 25-24.490 and 25-24.845, Florida Administrative Code. A copy of a rule request form prepared for your information is also attached. Please review the attached rules and prepare a Statement of Estimated Regulatory Costs if necessary.

c: Rick Moses  
Samantha Cibula

Attachments

M E M O R A N D U M

AUGUST 1, 2002

TO: CHRISTIANA T. MOORE (RULES COORDINATOR, OFFICE OF GENERAL COUNSEL)

FROM: RICK MOSES (DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT )  
MARTHA CARTER BROWN (OFFICE OF GENERAL COUNSEL) *MCB*

RE: DOCKET NO. 010774-TL, RE: PETITION OF THE CITIZENS OF THE STATE OF FLORIDA TO INITIATE RULEMAKING WHICH WILL REQUIRE TELEPHONE COMPANIES TO GIVE CUSTOMERS REASONABLE NOTICE BEFORE CUSTOMERS INCUR HIGHER CHARGES OR CHANGE IN SERVICES AND ALLOW THEM TO EVALUATE OFFERS FOR SERVICE FROM COMPETING ALTERNATIVE PROVIDERS - INFORMATION REGARDING RULEMAKING REQUEST

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This rulemaking docket was initiated upon OPC's Petition to Initiate Rulemaking, which the Commission approved by Order No. PSC-01-1344-TP, issued June 19, 2001. As a result, staff did not begin the rulemaking process with the usual rulemaking request. Since June, staff has been attempting to negotiate a compromise rule between OPC and the telecommunications companies. Unfortunately, those efforts have not been successful, and we are now proceeding with the formal rulemaking process. Because the information contained in a rulemaking request is helpful in developing a SERC - if we decide to request one - we have completed the form below. Also, this case is complicated by the fact that we now have two rules to present to the Commission at a rule proposal agenda: the initial rule propounded by OPC; and staff's consensus draft rule that incorporates the results of discussions and negotiations that have taken place over the last six months. The information for the request below will incorporate information on both rule proposals.

- 1. The following rules should be adopted or amended:**  
Rule 25-4.1105, F.A.C., Notice to Customers Prior to Increase in Rates or Charges - adopted



Rule 25-24.845, F.A.C. - rules incorporated by reference -  
Amended

Rule 25-24.490, F.A.C. - rules incorporated by reference -  
Amended

**2. Name of person originating rules / other staff assigned:**

Office of Public Counsel initiated the rule by petition as explained above. The staff's consensus draft rule is proposed by Rick Moses, Samantha Cibula and Martha Carter Brown. Craig Hewitt is assigned to write the Statement of Estimated Regulatory Costs, if necessary.

**3. Other divisions affected:**

none

**4. Other rules affected:**

Rule 25-24.490 - governing IXCs, will be amended to incorporate new Rule 25-4.1105 by reference.

Rule 25-24.845 - governing ALECs, will be amended to incorporate new Rule 25-4.1105 by reference.

**5. a. What is the specific legal authority for the rule, i.e., what statute says you can adopt rules?**

350.127; 364.0252; 364.19, F.S.

**b. What law is being implemented, interpreted, or made specific?**

364.0252; 364.19, F.S.

**6. Summary of rules:**

Both the staff's consensus draft rule and OPC's proposed rule address the problem of telecommunications companies raising prices for service to their existing customers without notice. The Commission has received some complaints from consumers whose rates were increased without prior notice. Without prior notice of price increases, the customers have no way to adjust their consumption or find a lower cost provider before they incur the additional costs. Both proposed rules are intended to prohibit this practice and require that companies provide their customers with reasonable prior notice of price increases.

7. **Are any forms or other material such as statutes or rules referenced in the rules?**

No.

8. **Purpose and effect of the rule adoption:**

The purpose and effect of both proposed rules is to require all telecommunications companies to provide reasonable prior notice to their customers of any increase in price or changes in terms and conditions of service that would increase the customers' cost of service. The rules differ in the type of notice they require. Staff's consensus draft requires that the notice must be reasonable, provided in a clear and conspicuous manner, and labeled "Notice of Price Increase." It does not mandate a particular form or method of notice, but provides a list of methods that would be presumed reasonable. OPC's proposed rule mandates a specific form of notice and method of delivery.

9. **Facts and circumstances justifying rule:**

As stated above, OPC petitioned the Commission to initiate this rulemaking. The Consumer Affairs Division has documented consumer complaints indicating that some companies - particularly interexchange carriers - have raised prices without prior notice to their customers. Material provided by OPC indicates that other states have also experienced this problem and are addressing it by state statutes or rules and through NARUC before the FCC. Without prior notice of prices charged for telecommunications service, telecommunications consumers cannot adjust their consumption or seek a lower cost provider. The proposed rules therefore require prior notice. Staff's proposed rule allows flexibility in the type and timing of notice that must be given, provided it is reasonable. OPC's rule proposes more detailed requirements for the means of notice.

10. **Will these rules affect small businesses as defined in Section 288.703(1)?**

Yes, the rule will affect some local exchange carriers (LECs) and Interexchange Carriers (IXCs) that are small businesses .

11. **Identify the benefits that should result from the rule adoption/amendment/peal to:**



The proposed rules will benefit consumers by providing them advance notice of price increases in their telecommunications service so that they may make an informed choice to modify their consumption or seek an alternative service provider. Effective competition depends in large part upon the ability of consumers to make informed choices in the marketplace.

**a. utilities:** The rule will benefit utilities by providing uniform standards for notice to consumers.

**b. ratepayers:** The rule will ensure that customers have adequate notice of price increases in telecommunications service

**c. Commission staff:** It is not anticipated that the rule will benefit the staff.

**d. small business:** Some telecommunications companies already provide notice of price increases to their customers. The rule proposed by the staff takes this fact into account and does not impose additional expense on those companies providing notice. Those companies not presently providing notice will be able to do so in ways the companies determine to be cost-effective, provided that the notice is reasonable. The rule will provide a uniform criteria for notice that will benefit competition and thus benefit all providers.

**e. state and local government entities, small counties (unincarcerated population of less than 75,000) and cities (unincarcerated population of less than 10,000):** No direct benefits.

**f. other parties directly affected:** none

12. Identify the number of individuals and entities affected and the types of costs associated with the rule adoption/amendment/repeal:

Local exchange and interexchange companies will be affected by the rule and will incur costs associated with formatting, printing, and mailing notices. Staff's proposed rule allows a variety of means of notice to accommodate those presently providing notice and to allow companies flexibility to choose cost-effective means of notice. It is expected that OPC's

proposed rule that requires a specific form of notice would involve more costs of programming, printing and mailing.

a. **utilities:** See above

b. **ratepayers:** Consumers may save money under this rule, because they will have the opportunity to adjust consumption or find a lower-cost provider when they receive a notice of price increase. Without prior notice they have no way to prevent incurring additional telecommunications costs.

c. **Commission staff:** none.

d. **small business:** See above

e. **state and local government entities, small counties (unincarcerated population of less than 75,000) and cities (unincarcerated population of less than 10,000):** None.

f. **other parties directly affected:** none.

13. a. Describe reasonable lower cost alternative methods for achieving the purpose of the rule, and explain why each alternative was rejected.

The staff's proposed notice rule is the lesser cost alternative to the rule originally filed by OPC, because it provides flexibility in the means and methods of providing notice. The only other alternative is no rule, which would not achieve the regulatory objective of ensuring that consumers were informed before their telecommunications costs increased.

b. What are the probable costs and benefits of not having this policy? See a. above.

c. In order to reduce the impact on small businesses, small counties, and small cities, did staff consider the methods listed in Section 120.54(3)(b)2.a.(I) through (V)?

I. Could less stringent compliance or reporting requirements be implemented? Yes, staff considered this in its proposed



rule.

II. Could there be less stringent schedules or deadlines for compliance or reporting requirements? Staff considered this in its proposed rule.

III. Could the rule's compliance or reporting requirements be consolidated or simplified? Staff considered this in its proposed rule.

IV. Could performance standards or best-management practices be established to replace design or operational standards in the rule? In light of the fact that some telecommunications companies are raising their customers prices without telling them ahead of time, it is unlikely that aspirational standards would correct the problem. Staff's proposed rule is designed to require the standard of prior notice while allowing flexibility in the means by which that standard is met.

V. Could small businesses, small counties, or small cities be exempted from any or all requirements of the rule? Customers of small businesses need prior notice of price increases as well as any, and thus small businesses could not be exempted from the rule requirement. Small counties or small cities are not affected by the rule unless they provide telecommunications service to the public.

14. To whom will the rule apply?

<input type="checkbox"/> Electric IOUs	<input checked="" type="checkbox"/> Local Exch.Telephone Cos.
<input type="checkbox"/> Electric Coops	<input checked="" type="checkbox"/> Interexch. Telephone Cos.
<input type="checkbox"/> Electric Munis	<input type="checkbox"/> Pay Telephone Cos.
<input type="checkbox"/> Gas utilities	<input type="checkbox"/> Shared Ten.Telephone Cos.
<input type="checkbox"/> Wastewater Utilities	<input checked="" type="checkbox"/> Alternative Access Vendors
<input type="checkbox"/> Water Utilities	<input checked="" type="checkbox"/> <u>Alternative Local Exchange</u>

15. Are there any federal standards or rules on the subject? If so, are these rules less restrictive, more restrictive, or substantively similar to the federal rules?

Presently there is a petition by NARUC before the FCC to initiate rules requiring interstate carriers to provide prior notice of price increases. The staff's proposed rule appears less restrictive than the NARUC proposal.

16. Does this rule relate exclusively to the Commission's



organization, procedure or practice? No.

17. If emergency rulemaking is recommended, describe the specific facts and reasons why the Commission should find an immediate danger to the public health, safety, or welfare which requires emergency action. Emergency rulemaking is not recommended.
18. Do you recommend a rule development workshop? If so, do you recommend the workshop be conducted by a neutral third person? The staff has already conducted two workshops and two small group meetings in an effort to reach consensus on this rule.
19. Do you recommend negotiated rulemaking? If so, whom do you recommend to sit on the committee that negotiates the rule? No. See 18 above.

Attachments:

  X   Draft of the rules

       Copy of any forms or material referenced in the rules

       Copy of applicable federal standards

       Copy of any Commission orders that the rule is codifying or that are helpful in understanding the basis of the rule

WP file location and name:

I:\PSC\\_\_\_\_\_ \WP\\_\_\_\_\_.

xc: Mary Bane  
Chuck Hill  
Noreen Davis  
Paul Stallcup  
Hurd Reeves

1        25-4.1105 Notice to Customers Prior to Increase in Rates or  
2 Charges

3    (1) All telecommunications companies shall provide reasonable  
4        notice of any increase in intrastate telecommunications rates,  
5        or any changes in terms or conditions that would cause a  
6        material increase in customer charges, to each of their  
7        affected retail subscribers, prior to implementation of the  
8        increase.

9    (2) The notice shall be clear and conspicuous, shall be  
10       identified with the heading: "Notice of Price Increase," or  
11       "Notice of Price Change," if the change will result in a price  
12       increase for some customers and a price decrease for some  
13       customers, and shall be presumed reasonable if provided in any  
14       of the following manners:

15    a) First class mail postmarked at least 15 days prior to the  
16       effective date of the increase in rates or charges to the  
17       customer;

18    b) A bill insert or bill message mailed to the customer no  
19       later than one billing cycle prior to the effective date  
20       of the increase in rates or charges to the customer;

21    c) For those customers who have elected to receive  
22       electronic billing, an electronic message sent at least  
23       7 days prior to the effective date of the increase in  
24       rates or charges to the customer; or

25    d) Pursuant to a written contract signed by the subscriber

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

1           that specifically prescribes a method for notice of price  
2           increases.

3   **Specific authority:** 350.127; 364.0252; 364.19, F.S.

4   **Law implemented:** 364.0252; 364.19, F.S.

5   **History:** New \_\_\_\_\_

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1        25-24.845 Customer Relations; Rules Incorporated.

2        The following rules are incorporated herein by reference and  
3 apply to ALECs. In the following rules, the acronym 'LEC' should  
4 be omitted or interpreted as 'ALEC'.

5	<u>SECTION</u>	<u>TITLE</u>	<u>PORTIONS APPLICABLE</u>
6	25-4.110	Customer Billing	Subsections (14), (15), (16),
7			(17), (18), and (20)
8	<u>25.4.1105</u>	<u>Notice to Customers Prior All</u>	
9		<u>to Increase in Rates and</u>	
10		<u>Charges</u>	
11	24-4.118	Local, Local Toll, or    All	
12		Toll Provider Selection	
13	<b>Specific Authority: 350.127(2), <u>364.0252</u>, <u>364.19</u>, and 364.337(2),</b>		
14	<b><u>and 364.604(5)</u>, F.S.</b>		
15	<b>Law Implemented: <u>364.0252</u>, 364.337(2), 364.602, 364.604, <u>364.19</u>,</b>		
16	<b>F.S.</b>		
17	<b>History: New 07-20-98, Amended 12-28-98, 07-05-00, <u>XX-XX-XX</u>.</b>		
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1           **25-24.490 Customer Relations; Rules Incorporated.**

2           (1) The following rules are incorporated herein by reference  
3 and apply to IXCs.

4	<u>SECTION</u>	<u>TITLE</u>	<u>PORTIONS APPLICABLE</u>
5	25-4.110	Customer Billing	Subsections <del>7</del> (14), (15),
6			(17), (18), and (20)
7	<u>25-4.1105</u>	<u>Notice to Customers Prior</u>	<u>All</u>
8		<u>To Increase in Rates and</u>	
9		<u>Charges</u>	
10	25-4.111	Customer Complaint	All except Subsection (2)
11		and Service Requests	
12	25-4.112	Termination of Service	All
13		by Customer	
14	25-4.113	Refusal or Discontinuance	All
15		of Service by Company	
16	25-4.114	Refunds	All
17	25-4.117	800 Service	All
18	25-4.118	Local, Local Toll, or	All
19		Toll Provider	
20		Selection	

21           (2) An IXC may require a deposit as a condition of service  
22 and may collect advance payments for more than one month of service  
23 if it maintains on file with the Commission a bond covering its  
24 current balance of deposits and advance payments (for more than one  
25 month's service). A company may apply to the Commission for a

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1 | waiver of the bond requirement by demonstrating that it possesses  
2 | the financial resources and income to provide assurance of  
3 | continued operation under its certificate over the long term.

4 | (3) Upon request, each company shall provide verbally or in  
5 | writing to any person inquiring about the company's service:

- 6 | (a) any nonrecurring charge,
- 7 | (b) any monthly service charge or minimum usage charge,
- 8 | (c) company deposit practices,
- 9 | (d) any charges applicable to call attempts not answered,
- 10 | (e) a statement of when charging for a call begins and ends,

11 | and

12 | (f) a statement of billing adjustment practices for wrong  
13 | numbers or incorrect bills.

14 | In addition, the above information shall be included in the first  
15 | bill, or in a separate mailing no later than the first bill, to all  
16 | new customers and to all customers presubscribing on or after the  
17 | effective date of this rule, and in any information sheet or  
18 | brochure distributed by the company for the purpose of providing  
19 | information about the company's services. The above information  
20 | shall be clearly expressed in simple words, sentences and  
21 | paragraphs. It must avoid unnecessarily long, complicated or  
22 | obscure phrases or acronyms.

23 | **Specific Authority:** 350.127(2), 364.0252, 364.19, 364.604(5), F.S.  
24 | **Law Implemented:** 364.0252, 364.03, 364.14, 364.15, 364.603, 364.19,  
25 | 364.337 364.602, 364.604, F.S.

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1 | History: New 02-23-87, Amended 10-31-89, 03-05-90, 03-04-92, 03-  
2 | 13-96, 07-20-98, 12-28-98, 07-05-00, XX-XX-XX.

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STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY



DIVISION OF EXTERNAL AFFAIRS  
CHARLES H. HILL  
DIRECTOR  
(850) 413-6800

Public Service Commission

August 2, 2002

Ms. Debby Walters  
Florida Agency for Health Care Administration  
Bureau of Medicaid Research  
2727 Mahan Drive, Mail Stop #17  
Tallahassee, Florida 32308

Dear Ms. Walters:

Thank you for giving us the opportunity to provide comments on the draft 211 Network Certification Rules. Our comments will focus on two areas of concern. First, in subsection (8), first sentence, we believe the word "only" should be replaced with "upon request." The revised sentence would read "The Federal Communications Commission has directed that all 211 numbers shall be assigned for information and referral services upon request."

The FCC's Third Report and Order and Order on Reconsideration (FCC 00-256), paragraph 21, states in part "...we direct that, when a provider of telecommunications services receives a request from an entity (e.g., the United Way) to use 211 for access to community information and referral services, the telecommunications provider must: (1) ensure that any entities that were using 211 at the local level prior to the effective date of this Order relinquish use of the code for non-compliant services..." (emphasis added.) While the Order is clear in directing telecommunications providers to make the 211 number available to information and referral service entities, the PSC staff believes it allows telecommunications providers to continue providing 211 service to existing customers until such time as a request is received from an information and referral service entity. Therefore, we believe using the phrase "upon request" is more reflective of the FCC Order.

Secondly, we believe subsection (13) should apply to disputes related to the certification process, not use of the 211 number. An applicant that disputes the results of the certification process should be allowed to request a Chapter 120 administrative hearing. However, as highlighted in subsection (12), a dispute over which entity may use the 211 number would be referred to the FCC. We suggest that the sentence be revised to read "Any dispute related to the certification of a 211 provider shall be resolved through a Chapter 120 administrative hearing." Alternatively, we would suggest that the subsection be deleted as it is not applicable to 211 number disputes.

Ms. Debby Walters  
Page 2  
August 2, 2002

Again, thank you for the opportunity to share our concerns with you. Please feel free to call me at 413-7015, or any of the other PSC staff on this project, if you have questions regarding our comments.

Sincerely,

Martha A. Golden  
Chief, Office of State Agency Liaison

cc: Mr. Mel Chang

**(Do we want to cc any of the phone company reps who've been working on this?)**

PSC, Division of Competitive Markets and Enforcement (Salak, Bulecza-Banks, Casey, Cater)

PSC, Division of External Affairs (Hill, C. Williams)

PSC, Division of General Counsel (Cibula)



STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
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RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL  
HAROLD A. MCLEAN  
GENERAL COUNSEL  
(850) 413-6199

## Public Service Commission

February 24, 2003

Mr. John Rosner  
Joint Administrative Procedures Committee  
Room 120 Holland Building  
Tallahassee, FL 32399-1300

By now your Office has received notice that the Commission voted to adopt a change to this proposed rule at its January 21, 2003, Agenda Conference, and published notice of that change in the February 7, 2003, Florida Administrative Weekly. The change deleted the word "material" from subsection (1) of the rule, and was made in response to your letter of November 12, 2002. For your information, I have enclosed a copy of the staff recommendation that the Commission approved in January. We plan to file the rule for adoption on February 28, 2003.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Samantha M. Cibula".

Samantha M. Cibula  
Senior Attorney

rosnerltr.smc  
Enclosure

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: JANUARY 9, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (BROWN, CYBULA) *S.M.C. DS*  
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (MOSES) *[Signature]*  
DIVISION OF CONSUMER AFFAIRS (DURBIN) *[Signature]*  
DIVISION OF ECONOMIC REGULATION (HEWITT) *[Signature]*

RE: DOCKET NO. 010774-TP - PETITION OF THE CITIZENS OF THE  
STATE OF FLORIDA TO INITIATE RULEMAKING WHICH WILL REQUIRE  
TELEPHONE COMPANIES TO GIVE CUSTOMERS REASONABLE NOTICE  
BEFORE CUSTOMERS INCUR HIGHER CHARGES OR CHANGE IN  
SERVICES, AND ALLOW THEM TO EVALUATE OFFERS FOR SERVICE  
FROM COMPETING ALTERNATIVE PROVIDERS.

AGENDA: 01/21/03 - REGULAR AGENDA - RULE ADOPTION - PARTICIPATION  
IS LIMITED TO COMMISSIONERS AND STAFF

RULE STATUS: ADOPTION SHOULD NOT BE DEFERRED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\010774#2.RCM

CASE BACKGROUND

On May 22, 2001, the Citizens of the State of Florida, through the Office of Public Counsel (OPC), filed a petition to initiate rulemaking. OPC proposed that the Commission adopt rules requiring telephone companies to give customers actual notice before implementing any change in rates or other terms and conditions of service. By Order No. PSC-01-1344-PCO-TP, issued June 19, 2001, the Commission granted OPC's petition and Commission staff proceeded with the rule development process.

Rule development workshops were held on October 24, 2001, and January 15, 2002, and staff also held two small informal group



meetings, on November 28 and December 18, 2001, with the representatives from the different sectors of the telecommunications industry and OPC. Although the workshop participants did not reach a consensus on a draft rule proposal, staff drafted a proposed rule based upon the comments and concerns raised at the meetings. The Commission addressed the staff's draft proposal, as well as OPC's original draft rule proposal at its October 1, 2002, Agenda Conference. After hearing comment from the participants and revising the staff's draft to reflect its response to those comments, the Commission decided to propose Rule 25-24.491, Notice to Customers Prior to Increase in Rates or Charges, to require interexchange telecommunications companies to provide reasonable prior notice to their customers of any increase in price or changes in terms and conditions of service that would increase the customers' cost of service.

The Commission published its Notice of Rulemaking in the October 18, 2002, Florida Administrative Weekly. The Notice required that any comments or requests for hearing must be filed with the Commission by November 8, 2002. While the Commission did not receive any request for a rule hearing on the proposed rule, it did receive written comments from AARP, and a letter from the Joint Administrative Procedures Committee (JAPC) (Attachment B) asking for clarification of the term "material" as used in subsection (1) of the rule. This is staff's recommendation on whether to adopt the proposed rule with changes in response to the comments from AARP and the letter from JAPC. We note that several participants<sup>1</sup> in the rulemaking process filed responses to AARP's comments, but since the responses were not filed by November 8, 2002, as the Commission's Notice of Rulemaking required, and because the Uniform Rules of Procedure do not provide for responses to written comments on proposed rules, staff has not considered those responses in its recommendation.

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<sup>1</sup> Verizon Florida, Inc., Verizon Long Distance and Verizon Select Services collectively filed a response to AARP's comments on November 18, 2002. Sprint, AT&T Communications, MCI Worldcom, and the Florida Competitive Carriers Association joined in Verizon's response. Sprint filed its joinder on November 27, 2002, and the other participants filed their joinder on November 21, 2002.



DOCKET NO. 010774-TP  
DATE: January 9, 2003

The Commission has jurisdiction in this matter under sections 120.54, 364.0252, and 364.19, Florida Statutes.

DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission adopt the changes to proposed Rule 25-24.491, Florida Administrative Code, that AARP has suggested?

**RECOMMENDATION:** No. The Commission should adopt the proposed Rule without the changes suggested by AARP. (BROWN, CIBULA, MOSES, DURBIN, HEWITT)

**STAFF ANALYSIS:** In its comments AARP suggests three changes to the Commission's proposed rule. First, AARP suggests that the rule should apply to all telecommunications carriers, not just interexchange carriers. AARP contends that there may be some local telecommunications providers that do not currently provide notice of price increases, and as local competition continues to develop in the state, customers who switch to new carriers should be provided the same consumer protection that this rule provides for long distance customers. Second, AARP suggests that the time for electronic notification of price increases to customers who receive electronic billing should be increased from 7 to 15 days. AARP believes that the 7-day time period may be too short, because some customers may not read their e-mail over the weekend. AARP contends that those customers might not have sufficient time to make adjustments or changes to their service before the price increase occurred. Third, AARP suggests that the Commission should prescribe one specific format for notification, rather than only requiring that the notice be "clear and conspicuous". AARP contends that the rule's requirement may not be specific enough to catch the attention of customers, and therefore the rule should require minimum font size for the notice language. AARP states that the establishment of reasonable minimum standards is not likely to be cost prohibitive.

The Commission considered these issues at its Agenda Conference in October, when it decided to propose the present rule. The Commission determined that there was no evidence that local exchange companies were raising their prices without prior notice to customers, and therefore no reason to apply this rule to them at this point. AARP has not provided any additional evidence on this point. Its concerns are only speculative. The Commission also considered sufficient the 7-day time period for electronic notice to customers receiving electronic billing; and AARP has not provided any evidence that it will not be sufficient. Again, its concerns are only speculative; and staff would point out that the

DOCKET NO. 010774-TP  
DATE: January 9, 2003

rule only provides that the 7-day electronic notice will be presumed reasonable under the safe-harbor provision of the rule. That presumption can be overcome in cases where the circumstances of the case show otherwise. The Commission also considered the format and font size issue when it proposed the rule. It determined that the "clear and conspicuous" language was definite enough to inform companies that notice must be provided in a manner that customers would see, but flexible enough to accommodate companies' different billing and notice formats. AARP has provided no concrete information to show that the present language will not be adequate or that a required format would not impose additional unnecessary costs on companies, particularly those that are already providing notice of price increases to their customers. When the rule is effective, and the Commission has experience with its operation, the Commission can expand the application of the rule, the notice time periods presumed reasonable, or the format requirements, if experience shows that the provisions of the rule are not accomplishing its purpose. For these reasons, staff recommends that the Commission should adopt proposed Rule 25-24.491, Florida Administrative Code, without the changes AARP proposes.



**ISSUE 2:** Should the Commission adopt a change to proposed Rule 25-24.491, Florida Administrative Code, to address JAPC's letter requesting clarification.

**RECOMMENDATION:** Yes. The Commission should adopt proposed Rule 25-24.491 with changes, deleting the word "material" from subsection (1) of the rule. (BROWN, CIBULA, MOSES, DURBIN, HEWITT)

**STAFF ANALYSIS:** Subsection (1) of Rule 25-24.491, Florida Administrative Code, "Notice to Customers Prior to Increase in Rates or Charges," provides as follows;

(1) All interexchange telecommunications companies shall provide reasonable notice of any increase in intrastate telecommunications rates, or any changes in terms or conditions that would cause a material increase in customer charges, to each of their affected residential and single-line business retail subscribers, prior to implementation of the increase.

In a letter dated November 12, 2002, JAPC asked the Commission staff to describe what would constitute a "material" increase in customer charges that would trigger the notice requirement of proposed Rule 25-24.491. JAPC's question calls to mind the provisions of Florida's Administrative Procedures Act prohibiting the adoption of rules that are vague or arbitrary or fail to establish adequate standards for agency decisions. See in particular section 120.52(8), Florida Statutes, which defines "invalid exercise of delegated legislative authority", in pertinent part, as follows:

(8) 'Invalid exercise of delegated legislative authority' means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies. . . .

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

- (e) The rule is arbitrary or capricious;
- (f) The rule is not supported by competent substantial evidence. . . .

Staff has reviewed the wording of subsection (1) of Rule 25-24.491, in light of JAPC's letter and section 120.52(8), Florida Statutes, and recommends that the Commission delete the word "material" from that subsection. The rule as a whole clearly intends that any increase in prices or any change in terms or conditions of service that increase the cost of service to a customer should be noticed to customers in advance. The use of the word "material" to qualify changes in terms or conditions that need to be noticed introduces ambiguity into the rule and is difficult to define in this context. While the companies argued at the Commission's October 1, 2002, Agenda Conference that the word "material" should remain in the rule, our review of that discussion does not reveal any evidence of, and we have been unable to identify, any real circumstance where an increase in the overall cost of service to a customer would be "immaterial" to the customer. Further, a change in the cost of service that might not seem "material" to one customer might seem quite "material" to another. Staff therefore believes that the rule is clearer, and the intent of the rule more evident, if the word "material" is removed.

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**ISSUE 3:** Should the rule be filed for adoption with the Secretary of State and the docket be closed?

**RECOMMENDATION:** Yes, a Notice of Change should be published in the Florida Administrative Weekly and the rule filed with the Secretary of State. (BROWN, CIBULA)

**STAFF ANALYSIS:** If the Commission approves the changes to Rule 25-24.491, a notice of change must be published. After the notice is published or if the rule is adopted without changes, the rule may be filed for adoption with the Secretary of State and the docket may then be closed.

Attachments



1 DOCKET NO. 010774-TP  
2 DATE: JANUARY 9, 2003

3 25-24.491 Notice to Customers Prior to Increase in Rates or Charges

- 4 (1) All interexchange telecommunications companies shall  
5 provide reasonable notice of any increase in intrastate  
6 telecommunications rates, or any changes in terms or  
7 conditions that would cause an an ~~material~~ increase in  
8 customer charges, to each of their affected residential  
9 and single-line business retail subscribers, prior to  
10 implementation of the increase.
- 11 (2) The notice shall be clear and conspicuous, shall be  
12 identified with the heading: "Notice of Price Increase,"  
13 or "Notice of Price Change," if the change will result in  
14 a price increase for some customers and a price decrease  
15 for some customers, and shall be presumed reasonable if  
16 provided in any of the following manners:
- 17 a) First class mail postmarked at least 15 days prior  
18 to the effective date of the increase in rates or  
19 charges to the customer;
- 20 b) A bill insert or bill message mailed to the  
21 customer no later than one billing cycle prior to  
22 the effective date of the increase in rates or  
23 charges to the customer;
- 24 c) For those customers who have elected to receive  
25

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

1 DOCKET NO. 010774-TP  
2 DATE: JANUARY 9, 2003

3 electronic billing, an electronic message sent at  
4 least 7 days prior to the effective date of the  
5 increase in rates or charges to the customer; or  
6 d) Pursuant to a written contract that specifically  
7 and conspicuously prescribes a method for notice of  
8 price increases.

9 Specific authority: 350.127; 364.0252; 364.19, F.S.

10 Law implemented: 364.0252; 364.19, F.S.

11 History: New \_\_\_\_\_.

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

JOHN M. McKAY  
President



Representative Donna Clarke, Chair  
Senator Betty S. Holzendorf, Alternating Chair  
Senator Bill Posey  
Senator Ken Pruitt  
Representative Nancy Argenziano  
Representative Wilbert "Tee" Holloway

THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

ATTACHMENT B  
**THOMAS FEENEY**  
Speaker



CARROLL WEBB, EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300  
Telephone (850) 488-9110

November 12, 2002

Ms. Samantha Cibula  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0862

**Re: Public Service Commission Rule 25-24.491**

Dear Ms. Cibula:

I have completed a review of proposed rule 25-24.491 and prepared the following comments for your consideration and response.

The rule directs interexchange telecommunications companies to provide notice to subscribers of any increase in intrastate rates. However, only notice of matters giving rise to *material* increases in customer charges need be provided. What is meant by a *material* increase?

Sincerely,

A handwritten signature in black ink, appearing to read "John Rosner".

John Rosner  
Chief Attorney

cc: Harold McLean, General Counsel

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JOHN M. McKAY  
President



Representative Donna Clarke, Chair  
Senator Betty S. Holzendorf, Alternating Chair  
Senator Bill Posey  
Senator Ken Pruitt  
Representative Nancy Argenziano  
Representative Wilbert "Tee" Holloway

THOMAS FEENEY  
Speaker



THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

CARROLL WEBB, EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL  
Room 120, Holland Building  
Tallahassee, Florida 32399-1300  
Telephone (850) 488-9110

November 12, 2002

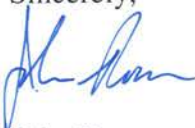
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Sincerely,  
  
John Rosner  
Chief Attorney

cc: Harold McLean, General Counsel

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FLA PUBLIC SERVICE COMMISSION  
OFFICE OF THE  
GENERAL COUNSEL

JAMES E. "JIM" KING, JR.  
President



JOHNNIE BYRD  
Speaker



THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

Senator Michael S. "Mike" Bennett, Chair  
Representative Juan-Carlos "J.C." Planas, Vice-Chair  
Senator Nancy Argenziano  
Senator Gwen Margolis  
Representative Bill Galvano  
Representative Yolly Roberson

CARROLL WEBB, EXECUTIVE DIRECTOR  
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Tallahassee, Florida 32399-1300  
Telephone (850) 488-9110

January 28, 2003

Ms. Samantha M. Cibula  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Blvd  
Tallahassee, Florida 32399-0850

**Re: Florida Public Service Commission  
Rule Chapter 25-24**

Dear Ms. Cibula:

According to our records, the above-referenced rules were noticed in the Florida Administrative Weekly on **October 18, 2002** and have never been filed for adoption.

Chapter 120, F.S., requires that rules be filed for adoption not more than 90 days from the date of the original notice unless one of the statutory exceptions applies. The extended 90-day period for filing these rules expired on **January 16, 2003**.

Subparagraph 120.54(3)(e)5., F.S., requires that if a rule is not adopted within the prescribed time limits, the agency shall withdraw the proposed rule and give notice of the withdrawal in the manner in which the rule was originally noticed. If an exception does not apply, please publish withdrawal of these rules in the Florida Administrative Weekly at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Carroll Webb".

Carroll Webb  
Executive Director  
and General Counsel

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FLA. PUBLIC SERVICE COM. 111  
OFFICE OF THE  
GENERAL COUNSEL