

STATE OF FLORIDA

COMMISSIONERS:
ANDREW GILES FAY, CHAIRMAN
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO



OFFICE OF THE GENERAL COUNSEL
KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

May 19, 2022

DFT #: 20210137

Ms. Anya C. Owens
Florida Department of State
Administrative Code and Register Section
Room 701, the Capitol
Tallahassee, FL 32399-0250
RuleAdoptions@DOS.MyFlorida.com

Via E-Mail

RECEIVED-FPSC
2022 MAY 19 PM 3:52
COMMISSION CLERK

Re: Rule Certification Packet for Rule 25-18.010, F.A.C.

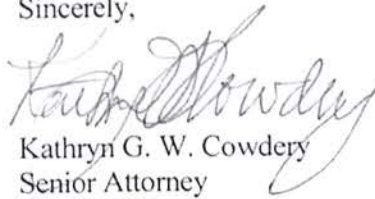
Dear Ms. Owens:

Enclosed for filing is a complete rule certification packet for Rule 25-18.010, F.A.C., consisting of:

- (1) One copy of the coded text of the rule in Word version;
- (2) There are no materials incorporated by reference into this rule.
- (3) One copy of the signed rule certification form;
- (4) One copy of the signed designation of minor violation rule certification form required by Rule 1-1.010, F.A.C.;
- (5) One copy of the coded text of the rule, including the legal citations and history notes;
- (6) One copy of the summary of the rule;
- (7) One copy of the detailed written statement of the facts and circumstances justifying the rule; and
- (8) One copy of the summary of the hearings held on the rule.

Please let me know if you have any questions. The contact name and information for this rule are Kathryn G. W. Cowdery, Florida Public Service Commission, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0250, (850) 413-6216, kcowdery@psc.stste.fl.us.

Sincerely,



Kathryn G. W. Cowdery
Senior Attorney

Enclosures

cc: Office of the Commission Clerk (Docket No. 20210137-PU)

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

I hereby certify:

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

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

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

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

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

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

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

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

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

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

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

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the ombudsman in the Executive Office of the Governor.

The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

25-18.010	
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Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective Date: _____

(month) (day) (year)



Signature, Person Authorized to Certify Rules

Commission Clerk

Title

2

Number of Pages Certified

**DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION
CERTIFICATION**

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No(s).

25-18.010

Rules covered by this certification:

Rule No(s).

25-18.010



Signature of Agency Head

Chairman, Florida Public Service Commission

Title

25-18.010 Pole Attachment Complaints

(1) A complaint filed with the Commission by a pole owner or attaching entity pursuant to Section 366.04(8), F.S., must contain:

(a) The name, address, email address, and telephone number of the complainant or complainant's attorney or qualified representative;

(b) A statement describing the facts that give rise to the complaint;

(c) Names of the party or parties against whom the complaint is filed;

(d) A copy of the pole attachment agreement, if applicable, and identification of the pole attachment rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments that is the subject matter of the complaint;

(e) A statement of the disputed issues of material fact or a statement that there are no disputed issues of material fact;

(f) If the complaint requests the establishment of rates, charges, terms, or conditions for pole attachments and the complainant proposes the application of rates, terms, or conditions that are based upon Federal Communications Commission (FCC) rules, decisions, orders, or appellate decisions, the complainant must identify the specific applicable FCC rules, decisions, orders, or appellate decisions that the Commission should apply pursuant to Section 366.04(8)(e), F.S.; provided, however, that if the complainant requests an alternative cost-based rate, the complainant must identify the methodology and explain how the alternative cost-based rate is just and reasonable and in the public interest.

(g) If the complaint involves a dispute regarding rates or billing, a statement of the dollar amount in dispute, the dollar amount not in dispute, whether the amount not in dispute has been paid to the pole owner, and if not paid the reasons why not;

(h) A statement of the relief requested, including whether a Section 120.569 and 120.57, F.S., evidentiary hearing is being requested to resolve the complaint; and

(i) A certificate of service that copies of the complaint have been furnished by email to the party or parties identified in paragraph (1)(c) of this rule.

(2) The filing date for the complaint is the date that a complaint is filed with the Commission Clerk containing all required information set forth in subsection (1) of this rule.

(3) The pole owner or attaching entity that is the subject of the complaint may file a response to the complaint. The response must be filed with the Commission Clerk within 30 calendar days of the date the complaint was served on the respondent, unless the Prehearing Officer grants a motion for extension of time filed pursuant to Rule 28-106.204, F.A.C., or Rule 28-106.303, F.A.C., as appropriate.

(4) A response filed under subsection (3) of this rule must include the following:

(a) A statement of whether a Section 120.569 and 120.57, F.S., evidentiary hearing is being requested to resolve the complaint; and

(b) If the complaint requests the establishment of rates, charges, terms, or conditions for pole attachments and the respondent proposes the application of rates, terms, or conditions that are based upon FCC rules, decisions, orders, or appellate decisions, the respondent must identify the specific applicable FCC rules, decisions, orders, or appellate decisions that the Commission should apply pursuant to Section 366.04(8)(e), F.S.; provided, however, that if the respondent requests an alternative cost-based rate, the respondent must identify the methodology and explain how the alternative cost-based rate is just and reasonable and in the public interest.

(5) The Commission will take final action on a complaint concerning rates, charges, terms, conditions, and voluntary agreements relative to pole attachments at a Commission Conference no later than 360 days after the complaint's filing date as set forth in subsection (2) of this rule.

(6) The Commission will take final action on a complaint limited to denial of access relative to pole attachments at a Commission Conference no later than 180 days after the complaint's filing date as established under subsection (2) of this rule.

Rulemaking Authority 350.127(2), 366.04(8)(g) FS. Law Implemented 366.04(8) FS. History-New _____

SUMMARY OF THE RULE

Rule 25-18.010 gives the information that must be included in a complaint and in a response to a complaint filed with the Commission by a pole owner or attaching entity pursuant to Section 366.04(8), F.S.; establishes the filing date for a complaint; and establishes time deadlines for Commission final action on complaints filed pursuant to Section 366.04(8), FS.

WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

Section 366.04(8)(g) required the Commission to propose procedural rules to administer and implement Section 366.04(8), F.S. for adoption no later than January 1, 2022. Rule 25-18.010, F.A.C., Pole Attachment Complaints, was proposed on November 4, 2021 to meet this requirement.

SUMMARY OF ANY HEARINGS HELD ON THE RULE

The Commission published its Notice of Proposed Rulemaking in Volume 47, No. 215, of the November 4, 2021, issue of the Florida Administrative Register (F.A.R.). A Joint Request for a Hearing and Separate Proceeding on Proposed Rule 25-18.010, F.A.C., was filed with the Commission on November 29, 2021 by Florida Internet and Television Association, Inc. and others (FIT et al.). The Joint Request for Hearing asked that changes be made to paragraphs (1)(f) and (4)(b) of the proposed Rule. These paragraphs contain requirements for information that must be submitted with a complaint filed pursuant to Section 366.04(8), F.S., and response to a complaint, respectively.

Also on November 29, 2021, FIT et al. filed a challenge to proposed rule 25-18.010 with the Division of Administrative Hearings (DOAH). (DOAH Case No. 21-3605RP) DOAH stayed the proceeding pending the Commission proceedings based on the unopposed motion for stay filed by FIT et al. On March 7, 2022, FIT et al. filed a Notice of Voluntary Withdrawal of DOAH Case No. 21-3605RP, and the case was closed on April 11, 2022.

On February 1, 2022, pursuant to notice published in Volume 48, No. 16, of the January 25, 2022 issue of the F.A.R., a section 120.54(3)(c)1., F.S., public hearing was held before the Commission on FIT's Joint Request for a Hearing and Separate Proceeding on Proposed Rule 25-18.010, F.A.C. The Commission heard comments from interested persons on whether changes should be made to the proposed rule. The Commission did not vote on whether changes should be made to the proposed rule and asked for the matter to be brought back before it at a later date for further consideration of all evidence and argument.

On March 1, 2022, a section 120.54(3)(c)1., F.S., public hearing was held on the proposed rule pursuant to notice of public hearing published in Volume 48, No. 30, of the February 14, 2022 issue of the F.A.R. The Commission heard comments from interested persons and voted to make changes to paragraphs (1)(f) and (4)(b) of proposed Rule 25-18.010, F.A.C. The changes required more detail and specificity as to what information must be filed with the Commission by requiring the complainant or respondent to specify any FCC rules, decisions, orders, or appellate decisions being relied upon, or, if an alternative cost-based rate is requested, the response or complaint must explain how the alternative cost-based rate is just and reasonable and in the public interest. The changes to proposed Rule 25-18.010 were published in the March 3, 2022 issue of the F.A.R., Volume 48, No. 43, in accordance with the Commission's vote.

On March 11, 2022, BellSouth Telecommunications, LLC, d/b/a AT&T Florida filed a Petition to Determine the Invalidity of Proposed Florida Administrative Code Rule 25-18.010 with DOAH. (DOAH Case No. 22-0774RP) AT&T challenged paragraphs (1)(f) and (4)(b) and alleged that the proposed rule was an invalid exercise of delegated legislative authority. The final hearing was conducted before a DOAH ALJ on April 19, 2022. On May 19, 2022, the ALJ issued his Final Order finding Rule 25-18.010 is valid.



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS

Governor

CORD BYRD

Secretary of State

May 19, 2022

Kathryn G. W. Cowdery, Senior Attorney
Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0250

Attention: Julie Phillips

Dear Katherine Cowdery:

Your adoption package for Rule 25-18.010, F.A.C. was received, electronically, by the Florida Department of State, Administrative Code and Register at 8:44 a.m. on May 19, 2022. After review, it appears that the package meets statutory requirements and those of Rule 1-1.010, F.A.C. and is deemed filed for adoption at the time received, as indicated above. The effective date is June 08, 2022.

Sincerely,

Anya C. Owens
Program Administrator

ACO/mas



Senator Ben Albritton, Chair
Representative Rick Roth, Vice Chair
Senator Loranne Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. "Shev" Jones
Representative Wyman Duggan
Representative Yvonne Hayes Hinson
Representative Thomas Patterson "Patt" Maney
Representative Angela "Angie" Nixon
Representative Anthony Sabatini



KENNETH J. PLANTE
COORDINATOR
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111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

CERTIFICATION

Department: Public Service Commission
Agency:
Rule No(s): 25-18.010
File Control No: 185354

As required by subparagraph 120.54(3)(c)4 F.S., the Joint Administrative Procedures Committee hereby certifies that:

- There were no material and timely written comments or written inquiries made on behalf of the committee regarding the above listed rule; or
- The adopting agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee regarding the above listed rules; or
- The adopting agency has not responded in writing to all material and timely written comments or written inquiries made on behalf of the Committee regarding the above listed rules.

Certification Date: 5/19/2022

This certification expires after: 5/26/2022

Certifying Attorney: Jamie Jackson

NOTE:

- The above certified rules include materials incorporated by reference.*
- The above certified rules do not include materials incorporated by reference.*

Julie Phillips

From: Swain, Margaret A. <Margaret.Swain@dos.myflorida.com>
Sent: Thursday, May 19, 2022 2:58 PM
To: Julie Phillips; Joint Administrative Procedures Committee
Cc: Kathryn Cowdery
Subject: Adoption Packet for 25-18.010
Attachments: 25-18.010.pdf

Good afternoon,

The attached rule adoption packet for 25-18.010, F.A.C. was filed in our office today.

Please feel free to contact me via email or phone if you have any further questions.

Respectfully,

Margaret Swain
Government Operations Consultant III
Florida Administrative Code and Register
Room 701 The Capitol | Tallahassee, Florida
(850)245-6208

From: Julie Phillips <JPhillip@PSC.STATE.FL.US>
Sent: Thursday, May 19, 2022 8:44 AM
To: RuleAdoptions <RuleAdoptions@Dos.myflorida.com>
Cc: Kathryn Cowdery <kcowdery@psc.state.fl.us>; Swain, Margaret A. <Margaret.Swain@dos.myflorida.com>
Subject: Rule Certification Packet for Rule 25-18.010, F.A.C.

EMAIL RECEIVED FROM EXTERNAL SOURCE

The attachments/links in this message have been scanned by Proofpoint.

Anya/Margaret,

Attached you will find the entire PDF certification packet for Rule 25-18.010, F.A.C., as well as the Word version of the coded text of said rule.

Please verify receipt by "Reply All".

Thank you.

Julie Phillips
Office of the General Counsel
Florida Public Service Commission
850.413.6084

Swain, Margaret A.

From: Julie Phillips <JPhillip@PSC.STATE.FL.US>
Sent: Thursday, May 19, 2022 8:44 AM
To: RuleAdoptions
Cc: Kathryn Cowdery; Swain, Margaret A.
Subject: Rule Certification Packet for Rule 25-18.010, F.A.C.
Attachments: 25-18.010 Cert Pkt FOR DOS.pdf; 25-18.010 10 pt. for adoption.docx

EMAIL RECEIVED FROM EXTERNAL SOURCE

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Anya/Margaret,

Attached you will find the entire PDF certification packet for Rule 25-18.010, F.A.C., as well as the Word version of the coded text of said rule.

Please verify receipt by "Reply All".

Thank you.

Julie Phillips
Office of the General Counsel
Florida Public Service Commission
850.413.6084