

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 17, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Cibula)
Division of Competitive Markets & Enforcement (R. Kennedy)
Division of Economic Regulation (Hewitt)

RE: Docket No. 040493-TP – Proposed amendment of Rule 25-24.516, F.A.C., Pay Telephone Rate Caps, and Rule 25-24.630, F.A.C., Rate and Billing Requirements.

AGENDA: 06/29/04 – Regular Agenda – Rule Proposal – Interested Persons May Participate

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040493.RCM.DOC

Case Background

The Commission has jurisdiction over pay telephone providers and operator services pursuant to sections 364.3375 and 364.3376, Florida Statutes. Currently, Rule 25-24.516(3), Florida Administrative Code, requires that a set use fee of \$0.25 shall apply to all completed 0-local calls placed from pay telephones. Also, Rule 25-24.603(2), Florida Administrative Code, states that a set use fee of \$0.25 shall apply and be remitted by the local exchange company to the pay telephone service provider for all 0- calls from pay telephone stations completed by the provider of local exchange telecommunications services.

The Federal Communications Commission (FCC) addressed the compensation for 0-local calls in In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, CC Docket No. 96-128, Order No. FCC 99-7, ¶¶ 51 and 53 (February 4, 1999)(Pay Telephone Order). In this order, the FCC designated 0- local calls as compensable calls subject to the default per-call compensation established in the order.

In Order No. PSC-99-2296-DS-TL, issued November 29, 1999, in Docket No. 991226-TL, In re: Petition by GTE Florida Incorporated for declaratory statement that the Commission's use fee rules do not prohibit GTE from compensating pay telephone service providers for 0-local calls under the FCC's per-call compensation scheme, or, in the alternative, petition for variance from Rules 25-24-516(3) and 25-24.630(2), F.A.C., (GTE Declaratory Statement Order), the Commission found that the FCC preempted the Commission from establishing a different set use fee for 0- local calls because the FCC established the default compensation for these calls in its Pay Telephone Order. The Commission declared that Rules 25-24.516(3) and 25-24.630(2) did not apply to GTE because the company was already compensating payphone service providers for 0- local calls and other pay phone calls under the federal scheme in accordance with the Telecommunications Act and FCC rules. The Commission also stated in the GTE Declaratory Statement Order that rulemaking will be initiated to repeal the set use fees for 0- local calls set forth in Rules 25-24.516 and 25-24.630.

In accordance with the Commission's direction in the GTE Declaratory Statement Order, this rulemaking was initiated to amend Rules 25-24.516 and 25-24.630 to remove the provisions in the rules which establish the \$0.25 set use fee for all completed 0- local calls placed from pay telephones. A Notice of Rule Development appeared in the March 19, 2004, edition of the Florida Administrative Weekly. The notice gave interested persons an opportunity to request a workshop to discuss the rule amendments. No workshop was requested, so none was held.

This recommendation addresses whether the Commission should amend the rules to repeal Rules 25-24.516(3) and 25-24.630(2). The Commission has rulemaking authority pursuant to sections 120.54, 350.127, 364.03, 364.01, 364.3375, and 364.3376, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-24.516, F.A.C., Pay Telephone Caps, and Rule 25-24.630, F.A.C., Rate and Billing Requirements?

Recommendation: Yes. The Commission should propose the amendment of the rules to repeal Rules 25-24.516(3) and 25-24.630(2), as set forth in Attachment A. (Cibula, R. Kennedy, Hewitt)

Staff Analysis: As stated in the case background, the FCC designated 0- local calls as compensable calls subject to the default per-call compensation established in its Pay Telephone Order. Consequently, the Commission in the GTE Declaratory Statement Order recognized that states are preempted from establishing a different compensation rate for 0- local calls. Also in the GTE Declaratory Statement Order, the Commission stated that a rulemaking would be initiated to delete the set use fees for 0- calls set forth in Rules 25-24.516 and 25-24.630, Florida Administrative Code.

In accordance with the Commission's direction in the GTE Declaratory Statement Order, a rulemaking was initiated to address this matter. As the FCC has preempted the Commission from establishing a different set use fee for 0- local calls, staff recommends that subsection (3) be deleted from Rule 25-24.516 and that subsection (2) be deleted from Rule 25-24.630.

Statement of Estimated Regulatory Costs

The Florida Administrative Procedures Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC) for rule developments. The SERC for this rule development is appended hereto as Attachment B.

The SERC states that the proposed rule amendments will conform the Commission's rules with the FCC's determination in its Pay Telephone Order concerning compensation for pay telephone call completion by local exchange carriers. It concludes that the rule amendments should have no negative impact on regulated communications companies or other entities.

Based on the foregoing, staff recommends that the rules be amended to repeal Rules 25-24.516(3) and 25-24.630(2), as set forth in Attachment A.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no request for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Cibula)

Staff Analysis: If no requests for hearing or comments are filed, the rules as proposed may be filed for adoption with the Secretary of State without further Commission action. The docket may then be closed.