

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: July 8, 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. 040167-TP – Proposed adoption of Rules 25-4.082, F.A.C., Number Portability, and 25-4.083, F.A.C., Preferred Carrier Freeze; and proposed amendment of Rules 25-4.003, F.A.C., Definitions; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations; Rules Incorporated.

AGENDA: 07/20/04 – 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\040167.RCM.DOC

Case Background

On April 20, 2004, the Commission voted to propose the adoption of Rules 25-4.082, Number Portability, and 25-4.083, Preferred Carrier Freeze, and the amendment of Rules 25-24.490, Customer Relations; Rules Incorporated, and 25-24.845, Customer Relations; Rules Incorporated. The purpose of the rule adoptions and amendments was to establish rules addressing issues surrounding number portability and the use of preferred carrier freezes (PC Freezes).

The Commission published its Notice of Proposed Rulemaking in the May 7, 2004, Florida Administrative Weekly. Although the Commission did not receive any requests for hearing on the proposed rules, it did receive comments on the rules submitted jointly by US LEC of Florida Inc. and XO Florida, Inc. (collectively referred to herein as US LEC/XO) and the staff

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of the Joint Administrative Procedures Committee (JAPC). This recommendation addresses whether the Commission should make changes to the proposed rules based on these comments.

The Commission has rulemaking authority in this matter pursuant to sections 120.54, 350.127, 364.01, 364.16, 364.337, and 364.603, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission adopt changes to proposed Rules 25-4.082, 25-4.083, and 25-24.490, Florida Administrative Code, to address US LEC/XO's and JAPC staff's comments?

Recommendation: Yes. The Commission should adopt proposed Rules 25-4.082, 25-4.083, and 25-24.490 with changes, as set forth in Attachment A. (Cibula, R. Kennedy)

Staff Analysis: As stated in the case background, the Commission voted to propose the adoption of Rules 25-4.082 and 25-4.083 and the amendment of Rules 25-24.490 and 25-24.845 on April 20, 2004. US LEC/XO and JAPC staff submitted comments on the proposed rules.

US LEC/XO's comments pertain to the term "working number" set forth in Rules 24-4.082 and 25-24.490. Specifically, the companies state that the rules do not define when a telephone number is considering "working." US LEC/XO state that they understand that a number that has been disconnected would not be considered a working number. However, they state that when service has been disconnected, the number may continue to have 9-1-1 or other emergency service number capabilities and may be connected to a customer service office. US LEC/XO further state that as the number has not been completely decommissioned, it may still be considered a working number, although limited in nature. US LEC/XO state that they would consider such numbers to be non-working.

US LEC/XO assert that no port should be required for numbers that have been suspended or disconnected. The companies request that the Commission clarify the proposed rules to state that "a working number does not include a number where the associated service has been suspended or discontinued in compliance with the applicable Commission rules, prior to the request for LNP from another carrier."

At the April 20, 2004, agenda conference, the Commission voted that only working numbers should be ported. To clarify the proposed rules, staff recommends that proposed Rules 25-4.082 and 25-24.490 be changed to state that a working number is a telephone number that is fully functional to the customer, as shown in Attachment A, pages 6 and 12. Staff believes that it is better to provide an example of a working number than to list exceptions as suggested by US LEC/XO. This change will address the concerns raised by US LEC/XO and is consistent with the Commission's intent for the rules.

In addition to US LEC/XO's comments, JAPC staff commented on proposed Rule 25-4.083. Specifically, it asked for the meaning of "appropriately qualified" in subsection (6)(c) of the proposed rule.¹ Staff included this language in the rule so that it would mirror the federal rule on the subject, Code of Federal Regulations (CFR), Title 47, Part 64, Subsection 1190. However, upon further reflection, staff recommends that these words can be deleted from the rule. Staff believes that the words are not necessary and adding a definition for these words may unduly complicate the rule. Staff would also note that the rule already sets forth requirements

¹ Staff notes that JAPC staff's letter also included a couple of other comments on Rules 25-4.082 and 25-4.083, to which staff counsel responded and resolved. No action is necessary by the Commission in regard to these comments.

for the independent third party under the rule in subsection (6)(c). See Attachment A, page 8, beginning at line 14. Thus, staff recommends that Rule 25-4.083 be changed as set forth in Attachment A, page 8. If a question develops as to the qualifications for the independent third party required by the rule, the rule can be amended at a future date.

Based on the foregoing, staff recommends that the Commission adopt proposed Rules 25-4.082, 25-4.083, and 25-24.490, Florida Administrative Code, with changes, as set forth in Attachment A.

Issue 2: Should the rules be filed for adoption with the Secretary of State and the docket closed?

Recommendation: Yes. A Notice of Change should be published in the Florida Administrative Weekly. After the notice is published, the rules may be filed for adoption with the Secretary of State and the docket may then be closed. (Cibula)

Staff Analysis: If the Commission approves the changes to Rules 25-4.082, 25-4.083, and 25-24.490 as set forth in Issue 1, a Notice of Change must be published in the Florida Administrative Weekly. After the notice is published, Rules 25-4.082, 25-4.083, 25-24.490, and 25-24.845 may be filed for adoption with the Secretary of State and the docket may then be closed.