

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: March 24, 2005

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

FROM: Office of the General Counsel (Stern)
Division of Competitive Markets & Enforcement (McDonald, Moses)
Division of Economic Regulation (Hewitt)

RE: Docket No. 991473-TP – Review and revision of Rules 25-4.002, 4.003, 4.0185, 4.023, 4.038, 4.039, 4.066, 4.070, 4.072, 4.073, 4.0770, 4.080, and 4.085, F.A.C.

AGENDA: 04/05/05 – 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\991473.RCM.DOC

Case Background

At the November 23, 2004 agenda conference, the Commission proposed amendments to the telecommunications service rules in Chapter 25-4, Florida Administrative Code. A notice of proposed rulemaking was published in the Florida Administrative Weekly on December 23, 2004. No comments or requests for hearing were filed in response. On January 21, 2005, a staff attorney for the Joint Administrative Procedures Committee (JAPC) notified Commission staff that he was considering objecting to one of the proposed rules, Rule 25-4.085, pertaining to service guarantee programs. This is an entirely new rule; it has never been adopted in any form. Staff responded with changes to the proposed rule on February 1, 2005, which satisfied the concerns of JAPC staff. The purpose of this recommendation is to obtain the Commission's approval of the revised language so that the rule can be filed for adoption.

Discussion of Issues

Issue 1: Should the Commission approve the revisions to Rule 25-4.085, Florida Administrative Code, that were made in response to comments of the staff attorney for the Joint Administrative Procedures Committee (JAPC)? (Attachment A)

Recommendation: Yes, the Commission should approve the revisions to Rule 25-4.085. (McDonald/Moses/Stern)

Staff Analysis: The text of Rule 25-4.085 as originally proposed by the Commission is:

25-4.085 Service Guarantee Program

A company may petition the Commission for approval of a Service Guarantee Program, which would relieve the company from the rule requirement of each service standard addressed in the approved Service Guarantee Program. The Commission shall have the right to enforce the provisions of the Service Guarantee Plan.

In its letter to staff, JAPC staff stated that the “rule should disclose the criteria pursuant to which the Commission will approve Service Guarantee Program service standards.” In the text below, the underlined sentence was approved by JAPC as an acceptable response to its comment.

25-4.085 Service Guarantee Program

A company may petition the Commission for approval of a Service Guarantee Program, which would relieve the company from the rule requirement of each service standard addressed in the approved Service Guarantee Program. When evaluating a Service Guarantee Program for approval, the Commission will consider the Program’s benefits to the customers and whether the Program is in the public interest. The Commission shall have the right to enforce the provisions of the Service Guarantee Plan.

This revision does not change the results of the statement of estimated regulatory costs that was done for the initially proposed rule.

If the Commission approves this revision, a notice of change will be published in the Florida Administrative Weekly. If no one files a rule challenge within 20 days after publication of the notice, then the rule will be filed for adoption with the Department of State.

Docket No. 991473-TP

Date: March 24, 2005

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

Recommendation: Yes. After a Notice of Change is published in the Florida Administrative Weekly, the rule should be filed for adoption with the Secretary of State 21 days thereafter and the docket may be closed. (Stern)

Staff Analysis: If the Commission approves the change to Rule 25-4.085, 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 without further Commission action. The docket may then be closed.