

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 2, 2005

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

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

RE: Docket No. 041017-TI – Revisions to intrastate interexchange telecommunications company rules in Chapters 25-4 and 25-24, F.A.C., to reflect 2003 statutory changes.

AGENDA: 06/14/05 – Regular Agenda – Participation is limited to Commissioners and Staff

RULE STATUS: Rule Adoption – May be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041017.RCM.DOC

Case Background

At the January 18, 2005 Agenda Conference, the Commission proposed changes to rules in Chapters 25-4 and 25-24, Florida Administrative Code. The proposed rules implemented the changes made to Chapter 364, Florida Statutes, in 2003. That rule package was referred to as the “IXC Rules.”

The changes to Chapter 25-4 have been filed for adoption. The Joint Administrative Procedures Committee (JAPC) had comments on some of the rules in Chapter 25-24, so that Chapter has not been filed for adoption. To address JAPC’s comments, some of the rules in Chapter 25-24 had to be revised. The rule revisions must be approved by the Commission before the rule can be filed for adoption.

Discussion of Issues

Issue 1: Should the Commission adopt the revisions to Rules 25-24.455, 25-24.474, 25-24.480, and 25-24.600 that are shown in Attachment 1, and that were made to address comments from JAPC?

Recommendation: Yes. (Stern)

Staff Analysis: Attachment 1 contains the rules with the revisions made after January 18, 2005, in order to address JAPC's comments. The specific portions of each rule that were changed since January 18 are shaded.

Rule 25-24.455 – Scope and Waiver

Rule 25-24.455 addresses the scope of the rules governing service by IXCs and includes a provision for when those rules can be waived. JAPC questioned language in the subparagraph on waivers.

JAPC objected to the word “may” as used in the phrase “the Commission may grant a waiver” in the originally proposed rule. JAPC argued that it was an invalid exercise of delegated legislative authority because it was vague, and that the rule should be revised so that a petitioner knows when waiver will and will not be granted. The rule was revised to eliminate this problem, as shown below. The revision staff recommends does not change the criteria for granting a waiver.

(24) An ~~IXC~~~~interexchange company~~ may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in part, or denied based on the following: ~~The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The Commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:~~

- (a) The factors enumerated in Section 364.337(4), Florida Statutes;
- ~~(ba)~~ The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived; ~~and~~
- ~~(cb)~~ Alternative regulatory requirements for the company which may serve the purposes of this part; ~~and~~
- (d) Whether the waiver is in the public interest.

Rule 25-24.474- Cancellation of Registration

This rule contains criteria for cancellation of an IXC's registration. Subparagraph (1) contains the criteria the Commission would use for canceling registration on its own motion. JAPC objected to use of the term “may” for the same reasons as explained for Rule 25-24.455. The rule was revised to eliminate this problem, as shown below. The revision staff recommends does not change the criteria for cancellation of registration.

(1) ~~The following are grounds for cancellation of Commission may on its own motion cancel a company's registration certificate for any of the following reasons:~~

- (a) Violation of the terms and conditions under which the authority was originally granted;
- (b) Violation of Commission rule or order; or
- (c) Violation of Florida Statutes.

Rule 25-24.480 – Records and Reports

As originally proposed, subparagraph (2) of this rule required that IXC's reimburse travel expenses when Commission staff had to inspect records kept out of state by IXC's. JAPC questioned the Commission's statutory authority to require such reimbursement. After additional scrutiny, staff concluded that because IXC's were no longer telecommunications companies, the Commission did not have the statutory authority to require such reimbursement. Staff deleted the provision, as shown below and in Attachment 1.

~~(2) — Any IXC that keeps its records outside the State shall reimburse the Commission for the reasonable travel expense incurred by each Commission representative during any review of the out of state records of the IXC or its affiliates. Reasonable travel expenses are those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business.~~

~~(a) — The IXC shall remit reimbursement for out of state travel expenses within 30 days from the date the Commission mails the invoice.~~

~~(b) — The reimbursement requirement in subsection (2) shall be waived:~~

~~1. For any IXC that makes its out of state records available at its office located in Florida or at another mutually agreed upon location in Florida within 10 working days from the Commission's initial request. If 10 working days is not reasonable because of the complexity and nature of the issues involved or the volume and type of material requested, the Commission may establish a different time frame for the IXC to bring records into the state. For individual data requests made during an audit, the response time frame established in Rule 25-4.0201, F.A.C., shall control; or~~

~~2. For an IXC whose records are located within 50 miles of the Florida state line.~~

Rule 25-24.600 – Application and Scope of Rules Governing Operator Service Providers

Subparagraph (3) of this rule allows any company subject to the laws on operator services to apply for a waiver from those laws. JAPC questioned the Commission's authority to make such a rule. Staff recommends deleting (3) because it is unnecessary. Section 366.337(2), Florida Statutes, identifies who can apply for statutory waivers and it does not need to be repeated in the rule. Subparagraph (3) has been deleted as shown below and in Attachment 1.

~~(3) — Each company subject to this Part may petition for exemption from applicable portions of Chapter 364, Florida Statutes, or for application of different requirements than those prescribed for telecommunications companies in Chapter 364, Florida Statutes, under the authority of Section 364.377, Florida Statutes.~~

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 Rules 25-24.455, 25-24.474, 25-24.480, and 25-24.600, 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.