

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: July 7, 2005

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

FROM: Office of the General Counsel (Moore, Rojas)
Division of the Commission Clerk & Administrative Services (Belcher, Flynn)
Division of Competitive Markets & Enforcement (Isler, Kennedy)
Division of Economic Regulation (Hewitt)

RE: Docket No. 050378-TP – Proposed amendment of Rule 25-4.0161, F.A.C.,
Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 07/19/05 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050378.RCM.DOC

Case Background

Sections 350.113 and 364.336, Florida Statutes, require each telecommunications company to pay a regulatory assessment fee (RAF) to the Commission to fund the Commission's costs of regulation. Subsection 350.113(4) requires the Commission to collect interest and penalties for late payment of RAF and all costs of collection. The late payment penalty is set by the statute at five percent for each 30 days the payment is late, not to exceed a total penalty of 25 percent. The interest rate is set by the Commission in Rule 25-4.0161(8)(b), Florida Administrative Code, at 12 percent. In addition, section 364.285, Florida Statutes, authorizes the Commission to impose a penalty on any entity subject to its jurisdiction for any refusal to comply with or willful violation of a Commission rule or order. The amount of the penalty or

fine under section 364.285 is left to the Commission's discretion, subject to a cap of \$25,000 per offense. The Commission typically imposes the section 364.285 penalty for a company's violation of the RAF rule by failing to timely file the RAF form, and it is typically in the amount of \$500 for a first violation. *E.g.*, Order No. PSC-04-1271-PAA-TC issued December 23, 2004. In order for this penalty to be assessed under current practice, staff must file a recommendation for the Commission's action at an agenda conference.

In 2003 there were 619 telecommunications companies that were delinquent in paying their RAF. Of those, staff established 134 dockets after its efforts to contact the companies and collect the fee without an order by the Commission were unsuccessful. Depending on when during the collection process the fee is actually collected, the collection costs for delinquent RAF range from \$200 to \$430 per company.

A notice of proposed rule development to amend Rule 25-4.0161 to codify penalty amounts was published in the Florida Administrative Weekly and sent to each certificated or registered telecommunications company. A workshop was not requested and none was held.

Discussion of Issues

Issue 1: Should the Commission amend Rule 25-4.0161, Florida Administrative Code, to specify the penalty to be imposed for violating the rule's requirement to file a regulatory assessment fee return by the due date?

Recommendation: Yes. (Moore, Rojas, Belcher, Flynn, Isler, Kennedy, Hewitt)

Staff Analysis: Staff recommends adding subsections (9) through (13) to Rule 25-4.0161 to specify the procedures to be followed and the penalties that will be imposed when a company fails to file a regulatory assessment fee return and pay the fee by the due date. By adopting a rule that specifies the penalties to be levied for each offense, staff believes that more aspects of the RAF collection process can be handled administratively and more efficiently.

The monetary penalty that is authorized by subsection 364.285(1), Florida Statutes, is stated in the rule and is in addition to the statutory charges that are mandated by subsection 350.113(4) and that are calculated according to that statute and subsection (8) of the rule. The rule will require staff to send a delinquency notice, and the penalty will be imposed upon a certificated or registered telecommunications company that fails to pay the RAF within 15 days after receiving a delinquency notice. A docket will be established and the telecommunications company will be notified of the penalty through a proposed agency action order that is issued administratively.

The amount of the penalty increases based on the number of times the company has failed to pay RAF by the deadline imposed in a delinquency notice. The penalty for a first violation is \$500, \$1,000 for a second violation, and \$2,000 for a third violation. Because the amount of the penalty is set by rule, it would not be negotiable. If the company fails to pay the full amount stated in the Notice of Proposed Agency Action, the company's certificate will be

cancelled or, for an interexchange carrier (IXC), its name will be removed from the Commission's register. As with any other proposed agency action order issued by the Commission, the affected party will have an opportunity to protest the order and request a hearing. If a company fails for a fourth time to pay the RAF after being sent a delinquency notice, the rule requires staff to file a recommendation to the Commission for further action, but does not specify what that action will be. Subsection (13) of the rule provides that a company that reapplies for a certificate or for registration must pay all prior unpaid RAF and RAF penalties.

The proposed rule amendment is intended to streamline the RAF collection process, significantly reduce the cost to the Commission for collecting RAF, and help ensure consistent treatment of certificated and registered telecommunications companies.

Statement of Estimated Regulatory Cost

It is anticipated that implementation of the rule will result in a decrease in enforcement costs for collection of delinquent RAFs. A Statement of Estimated Regulatory Cost (SERC) is attached. (Attachment B.)

Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Moore)

Staff Analysis: Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

Attachments

Rule 25-4.0161
SERC