

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-**

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**DATE:** October 20, 2005

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

**FROM:** Office of the General Counsel (Moore)  
Division of Competitive Markets & Enforcement (Kennedy)  
Division of Economic Regulation (Hewitt)

**RE:** Docket No. 050681-TP – Proposed amendment of Rules 25-24.511, 25-24.512, 25-24.567, 25-24.569, 25-24.720, 25-24.730, 25-24.810, and 25-24.815, F.A.C., Application for Certificate; or Application for Approval of Assignment, or Transfer of Certificate.

**AGENDA:** 11/01/05 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All

**PREHEARING OFFICER:** Edgar

**RULE STATUS:** Proposal Should Not Be Deferred

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\050681.RCM.DOC

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### Case Background

Section 364.335, Florida Statutes, requires an applicant for a certificate to provide telecommunications services to pay an application fee to the Commission in an amount not to exceed \$500. This amount was increased by the Legislature in 2005 from a maximum of \$250 to allow the Commission to collect an amount that more closely reflects its cost of processing applications. The Commission's current rules impose a fee of \$100 on an applicant for a pay telephone (PATS) certificate or a shared tenant services (STS) certificate, and a fee of \$250 for an applicant for an alternative access vendor (AAV) certificate or a competitive local exchange service (CLEC) certificate.

A notice of proposed rule development to amend the rules to increase the fees was published in the July 1, 2005, 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, and none was held.

The Commission has rulemaking authority pursuant to Sections 120.54, 350.127, 364.33, 364.335, 364.337, 364.3375, 364.339, and 364.345, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission amend Rules 25-24.511, 25-24.512, 25-24.567, 25-24.569, 25-24.720, 25-24.730, 25-24.810, and 25-24.815, Florida Administrative Code, to increase the fees charged for an application for a certificate or an application for approval of a sale, assignment, or transfer of certificate, and to revise the application forms to eliminate unnecessary information?

**Recommendation:** Yes.

**Staff Analysis:** The primary basis for recommending changes to the CLEC, PATS, AAV and STS certificate rules is to increase the fees charged by the Commission to process applications for a new certificate and the fees for the sale, transfer or assignment of an existing certificate. The new fees reflect the Commission's costs for processing the applications and vary depending upon the type of application. The result is intended to more fairly allocate the cost burden among applicants and current certificate holders.

Changes have also been made to the application forms for the four types of telecommunications companies to update them and to eliminate unnecessary or redundant requirements. In addition, due to technological improvements in the Commission's electronic support systems, applicants now need to file fewer copies of the application than the rules currently require.

**25-24.511, Application for Certificate:** Rule 25-24.511 requires a person to have a certificate to provide PATS. The rule incorporates by reference an application form and requires payment of an application fee of \$100. Staff recommends revising the rule to increase the application fee to \$250. In addition, the rule should be revised to delete subsection (5) which prohibits the issuance of a new certificate to any applicant who has previously had a certificate involuntarily cancelled. Currently, a pay telephone provider whose certificate has been cancelled as a result of, for example, non-payment of regulatory assessment fees, and who wishes to rectify the matter and remain in business, must petition for a waiver of the rule and reapply for certification. In contrast, CLECs, STS providers, and AAVs are not subject to the same or similar regulation. Staff believes that pay telephone providers should have the same opportunity to rectify matters with the Commission and reapply for certification. The Commission has the authority to deny certification if the circumstances warrant denial.

**25-24.512, Improper Use of a Certificate:** Rule 25-24.512 provides that no certificate authorizing PATS shall be sold, assigned, or transferred. Staff recommends amending the rule

to authorize applications for sale, assignment or transfer of a pay telephone certificate, and to change the title of the rule. New provisions incorporate the application form and require payment of an application fee of \$250. Consistent with Section 364.335, Florida Statutes, an application will be granted if the Commission determines that approval is in the public interest.

Pay telephone providers are not currently permitted to transfer a certificate. If an individual wants to convert the business to a corporation, then he must cancel the certificate bearing his name, and apply for a new certificate in the corporation's name. Other scenarios are just as cumbersome to the industry. The recommended amendment will allow pay telephone providers the same opportunity to transfer a certificate as currently afforded CLEC, STS, and AAV providers. From an historical perspective, the Commission in Order No. 21127, issued April 26, 1989, barred the sale, transfer, or assignment of a pay telephone certificate. In the early days of competitive pay telephone services, the Commission did not want an individual who was being sold, transferred, or assigned a pay telephone certificate being led to believe that the certificate had some intrinsic monetary value for which the previous holder should be compensated. The pay telephone business is no longer a fledgling industry, and the market is highly competitive. These factors should mitigate any concerns that existed in the late 1980s and early 1990s. The effect is that pay telephone applicants will have the same opportunity to apply for a certificate upon the sale, transfer or assignment as other types of telecommunications services providers.

**Rule 25-24.567, Application for Certificate:** Rule 25-24.567, Application for Certificate, provides that any person desiring to provide STS must submit an application for Commission approval. The rule incorporates an application form and requires payment of a fee of \$100. Staff recommends amending the rule to increase the fee to \$250 and to reduce the number of copies to be filed from six to two.

**Rule 25-24.569, Application for Approval of Assignment or Transfer of Certificate:** Rule 25-24.569 provides instructions for the assignment or transfer of a STS certificate. There is currently no requirement that a fee be paid. Staff recommends amending the rule to require payment of an application fee of \$250 and to reduce the number of copies of the form that must be filed from six to two. In addition, the rule should be amended to encompass applications for the sale of a certificate as well as transfer or assignment. This is consistent with Section 364.345(2), Florida Statutes.

**Rule 25-24.720, Application for Certificate:** Rule 25-24.720 requires an applicant seeking to provide AAV services to obtain a certificate. The rule incorporates by reference an application form and requires that an applicant submit 12 copies of the form and pay the Commission an application fee of \$250. Staff recommends amending the rule to reduce the number of required copies to two, and to update the form. The amount of the fee should remain the same.

**Rule 25-24.730, Application for Approval of Sale, Assignment, or Transfer of Certificate:** Rule 25-24.730 provides instructions for obtaining Commission approval for the sale, assignment or transfer of an AAV certificate. Staff recommends amending the rule to reduce the

number of required copies from twelve to two, and to update the form. The amount of the fee should remain at the current amount of \$250.

**Rule 25-24.810, Application for Certificate:** Rule 25-24.810 requires an applicant for a certificate to provide CLEC services to file an original and six copies of an application form, which is incorporated into the rule, and to pay an application fee of \$250. Staff recommends increasing the fee to \$400 and reducing the required form copies to two.

**Rule 25-24.815, Application for Approval of Assignment or Transfer of Certificate:** Rule 25-24.815 provides instructions for the assignment or transfer of a CLEC certificate. Staff recommends amending the rule to increase the application fee of \$250 to \$400, and to reduce the number of copies of the form that must be filed from six to two. In addition, the rule should be amended to include the term "sale" of a certificate as well as the transfer or assignment. This is consistent with the language in Section 364.345(2), the law implemented by this rule.

The recommended changes to the rules will increase the cost to most telecommunications certificate applicants by \$150 to \$250. For calendar year 2004, the Commission approved 124 certificates (4 AAV, 59 CLEC, 58 PATS, and 3 STS) authorizing AAV, CLEC, PATS, and STS services in Florida. Staff determined that the net cost impact using the fees in the recommended rule amendments is that the industry would have paid an additional \$18,000 to the Commission for application processing.

A Statement of Estimated Regulatory Cost is attached.

**Issue 2:** Should the docket be closed?

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

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

Attachments:

Rules

Statement of Estimated Regulatory Cost