

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: November 21, 2006

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

FROM: Division of Competitive Markets & Enforcement (Beard, Casey)
Office of General Counsel (Fudge, Teitzman)

RE: Docket No. 060663-TP – Implementation of 811 NXX code as national abbreviated dialing code to be used by state One Call notification systems for providing advance notice of excavation activities to underground facility operators in compliance with Pipeline Safety Improvement Act of 2002.

AGENDA: 12/05/06 – Regular Agenda – Proposed Agency Action -Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: April 13, 2007, Date of Federal Mandate to Implement the 811 NXX Code

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\060663.RCM.DOC

Case Background

In 1998, the United States Department of Transportation (DOT) established the One Call notification program. This program was designed to enhance public safety, protect the environment, minimize risks, and prevent disruption of underground public services by reducing damage to underground facilities during excavation. By establishing a toll-free notification system, the public as well as excavators, contractors and facility owners and operators can “Call before you dig” to learn of any infrastructure that may be impacted during their excavation. One Call notification programs were established all over the country, in each state and each One Call

center was assigned a different 10-digit toll-free telephone number to administer for excavators and excavations.

In 1993, by adoption of the "Underground Facility Damage Prevention and Safety Act," the state of Florida established its One Call center, Sunshine State One Call of Florida (SSOCOF). SSOCOF is a not-for-profit corporation operating under Chapter 556, Florida Statutes. It is responsible for educating homeowners, the general public, excavators, contractors and underground facility owners and operators about the importance of calling before you dig. SSOCOF is also responsible for providing a toll-free telephone number to call for information and notification of excavations.

On December 17, 2002, President George W. Bush, signed the Pipeline Safety Improvement Act of 2002 ("Pipeline Safety Act" or "The Act") into law. The Act reflected the government's support for the One Call program by requiring the DOT, with the help of the Federal Communications Commission (FCC), to provide for the establishment of a 3-digit nationwide toll-free telephone number to be utilized by State One Call notification systems. The DOT supported the North American Numbering Council's¹ recommendation to use an N11 code, specifically 811, for utilization by the state One Call centers.

On March 14, 2005, the FCC released its Sixth Report and Order² on the use of N11 codes and other abbreviated dialing arrangements. This order designated the 811 code as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with The Act. Order FCC 05-59 stated:

The 811 abbreviated dialing code shall be deployed ubiquitously by carriers throughout the United States for use by all telecommunications carriers, including wireline, wireless, and payphone service providers that provide access to state One Call Centers. (¶ 4)

The FCC required that 811 be active and operational within two years from publication of its Order in the Federal Register, which is April 13, 2007. In its order, the FCC delegated authority to the states to address the issues associated with implementation, stating:

We recognize that states have unique knowledge that will assist in implementing the transition to the One Call Center access set forth in this Order. We therefore delegate authority to the state commissions, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of 811. In delegating authority to the state commissions to address the technical and operational issues, state commissions should also consider whether a carrier may need additional time to implement 811 due to such technical and/or operational

¹ On October 5, 1995, the FCC established the North American Council (NANC) to provide advice and recommendations to the FCC and other governments (including Canada and Caribbean countries) on numbering issues.

² In the Matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 05-59, Released March 14, 2005.

difficulties. We agree with MPSC that state commissions are in the best position to address issues associated with implementing the abbreviated dialing arrangement because many of the One Call Centers were developed by, or under the auspices of, the state commissions. (¶ 35)

The Florida Public Service Commission (PSC or Commission) held a workshop September 26, 2005 where attendees were requested to submit comments regarding implementation of 811. Staff specifically requested comments regarding the parties concerns with costs of implementation, any anticipated problems, whether the parties had customers already utilizing the 811 code for a different service, and the effective roll-out date if there was one, prior to the mandatory date of April 13, 2007.³ The primary issue of the parties is the cost of implementation of 811. After the workshop, staff suggested the parties attempt negotiation to resolve the issue of the implementation costs.

SSOCOF believes it should not incur any costs to implement the 811 code. Incumbent Local Exchange Companies (ILECs) and Competitive Local Exchange Companies (CLECs) believe that SSOCOF should be responsible for the costs incurred to make the necessary software changes for the 811 code. The following is the only requirement of One Call Centers contained in Order FCC 05-59:

To ensure that calls to One Call Centers are toll-free, we conclude that One Call Centers shall provide to carriers its toll-free number, which can be an 8YY number, or any number that is not an IntraLATA toll call, from the area to be served for use in implementing 811. Thus, when a caller dials 811, the carriers will translate 811 into the appropriate number to reach the One Call Center. This requirement will both simplify call routing and ensure that callers do not incur toll charges, as mandated by the statute. As discussed above, other existing abbreviated dialing sequences shall be discontinued, because the use of other existing abbreviated dialing sequences in addition to 811 does not comply with the statutory mandate that dialing be uniform across the nation. (¶ 26)

SSOCOF has provided the toll-free number 1-800-432-4770 as the number that 811 should translate to. This recommendation addresses the technical and operational issues associated with the implementation of 811.

We are vested with jurisdiction pursuant to Sections 364.01 and 364.16(4), Florida Statutes, and 47 C.F.R. §§52.3 and 52.19.

³ The following parties submitted post-workshop comments and/or reply comments: SSOCOF, Verizon, BellSouth, Sprint-Nextel, AT&T, NEFCOM, Frontier, ALLTEL-Florida, ALLTEL Communications, Cox Communications, TDS Telecom, Teco Energy, Time Warner Telecom, US LEC, and XO.

Discussion of Issues

Issue 1: Should ILECs and CLECs be ordered to make their switches available and operational to allow the 811 code to be used by customers to notify Sunshine State One Call of Florida of excavations? If so, as of what date?

Recommendation: Yes, staff recommends that the Commission order ILECs and CLECs to make their switches available and operational by February 15, 2007, to allow the 811 code to be used by customers to notify Sunshine State One Call of Florida of excavations. Staff also recommends that the Commission order ILECs and CLECs to cease using 811 for commercial services by February 14, 2007, and file tariffs, price lists or notification reflecting the implementation of 811 with the PSC by February 15, 2007. (Beard)

Staff Analysis: In Order FCC 05-59, released March 14, 2005, the FCC delegated authority to the states to mandate that ILECs and CLECs make the 811 code available and operational within two years from publication of its Order in the Federal Register, which is April 13, 2007. The PSC requested and received comments from SSOCOF and several of the ILECs and CLECs after an 811 workshop was held September 26, 2005. The workshop addressed the technical and operational issues associated with the conversion from a 10-digit telephone number to the use of a 3-digit N11 code. Comments concluded that the main issue between the parties is the cost associated with implementation of 811. The FCC addressed 811 implementation costs in Order FCC 05-59 by stating:

While we recognize that there may be some costs associated with implementation of the 811 code, we have not specified parameters for cost recovery in this *Order*. The Pipeline Safety Act did not provide for federal financial support as part of the mandate for a nationwide abbreviated dialing arrangement for access to One Call Centers. Therefore, we find that the Congressional mandate and benefits of a national N11 code assignment, specifically 811, outweigh any concerns regarding cost recovery on the federal level. These issues are most appropriately addressed by the state and local governments. As indicated above, we believe that state commissions are in the best position to address issues associated with implementing 811 because many of the One Call Centers were developed by, or under the auspices of, the state commissions. (Appendix B, ¶ 39)

Unlike other states in which One Call Centers were developed under the auspices of their respective state commissions, SSOCOF was developed under separate statutory authority of Chapter 556, Florida Statutes. The Commission lacks specific authority to assess any costs resulting from this federal mandate upon SSOCOF. However, the Commission can require ILECs and CLECs under its jurisdiction to have their software translated to accept 811 calls by February 15, 2007. It would then be up to SSOCOF to make arrangements with the ILECs and CLECs for use of the 811 code.

At staff's request, the parties have attempted to negotiate the costs of implementing 811 with limited success. SSOCOF made an offer to pay \$250 per switch for the necessary software translations. Some ILECs and CLECs have agreed to that price, some ILECs and CLECs are making the software changes at less than \$250 per switch or at no cost, and some ILECs and

CLECs have not replied to SSOCOF's offer. Throughout negotiations, the ILECs, CLECs, and the SSOCOF have been in contact with the PSC to update staff regarding their progress.

Staff believes that the software translation costs of ILECs and CLECs should be allocated over the people who most benefit from the 811 service, members of SSOCOF. Section 556.103, Florida Statutes, provides that "Each operator of an underground facility in this state shall be a member of the corporation and shall use and participate in the system." Section 556.110, Florida Statutes, states that "Member operators shall proportionately share in the cost of operating the system through monthly assessments made upon each member operator. However, any member that receives fewer than 10 notifications in any month shall not be assessed for such month." Consequently, staff believes that the method by which the software translations costs are allocated should be determined by SSOCOF.

ILECs and CLECs in Florida which do excavation work are required to be members of SSOCOF. Staff believes that ILECs and CLECs alone should not bear the cost burden of translation costs for 811 when all members of SSOCOF, not just ILECs and CLECs, will benefit. Staff believes that 811 should be made available prior to the April 13, 2007, mandated timeframe to allow for any technical issues to be worked out. Therefore, staff recommends that the Commission order ILECs and CLECs to make their switches available and operational by February 15, 2007, to allow 811 to be used by customers to notify Sunshine State One Call of Florida of excavations. Staff also recommends that the Commission order ILECs and CLECs to cease using 811 for commercial services by February 14, 2007, and file tariffs or notification reflecting the implementation of 811 with the PSC by February 15, 2007.

Issue 2: Should the Commission order all payphone providers in Florida to implement 811 access to be used by customers to notify Sunshine State One Call of Florida of excavations from all Florida payphones? If so, as of what date?

Recommendation: Yes, the Commission should order all payphone providers in Florida to implement 811 access to be used by customers to notify SSOCOF of excavations from all Florida payphones. Payphone providers should be ordered to have 811 access available by February 15, 2007, and allow 811 to be forwarded as dialed to the local exchange company to provide 811 access for use by customers to notify SSOCOF. (Beard)

Staff Analysis: In order to be compliant with FCC Order 05-59, it is necessary that the 811 dialing code function uniformly throughout the state, including pay telephones. The Florida pay telephone providers, however, may currently be using 811 from their pay telephones to offer a service. As noted in past N11 conversions,⁴ industry representatives stated that, for most pay telephones, the software can be reprogrammed remotely and downloaded to the pay telephones via modem. There should be minimal costs involved with implementing the 811 dialing code for use by customers to notify SSOCOF of excavations.

Further, the FCC has directed that pay telephone providers be compensated for every call made from their pay telephones, with the exception of 911 calls. Therefore, pay telephone providers can charge for 811 access. Staff assumes that 811 access would be charged at the same level as a local telephone call. Order FCC 05-59 states:

We agree with APCC that Section 276 of the 1996 Act does not exempt payphone calls made to One Call centers from that statute's requirement that payphone service providers be "fairly compensated." See 47 U.S.C. §276(b)(1). Therefore coin calls made from a payphone to a One Call Center should be paid in accordance with the payphone's established coin rate, and coinless calls made from a payphone to a One Call Center should be compensated in accordance with the Commission's payphone compensation rules. (Footnote 44, p. 7)

Therefore staff recommends that the Commission order all payphone providers in Florida to implement 811 access to be used by customers to notify SSOCOF of excavations from all Florida payphones. Payphone providers should be ordered to have 811 access available by February 15, 2007, and allow 811 to be forwarded as dialed to the local exchange company to provide 811 access for use by customers to notify SSOCOF.

⁴ Docket No. 021068-TC – Implementation of 211 access to comprehensive information and referral services from pay telephones.

Docket No. 060663-TP
Date: November 21, 2006

Issue 3: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Fudge)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.