

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: March 1, 2007

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

FROM: Office of the General Counsel (Cibula)
Division of the Commission Clerk & Administrative Services (Belcher)
Division of Competitive Markets & Enforcement (Kennedy)
Division of Economic Regulation (Dickens)

RE: Docket No. 060668-TP – Proposed amendment of Rule 25-4.0161, F.A.C.,
Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 03/13/07 – Regular Agenda – Rule Adoption – Participation is Limited to
Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

RULE STATUS: Adoption Should Not Be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060668.RCM.DOC

Case Background

Section 364.336, Florida Statutes, requires each telecommunications company licensed or operating in Florida to pay the Commission a fee that may not exceed 0.0025 of its annual gross operating revenues derived from intrastate business. Rule 25-4.0161, Florida Administrative Code, sets the fee at 0.0020 of gross operating revenues. In 2005, the Legislature amended section 364.336, Florida Statutes, to authorize the Commission to charge telecommunications companies a minimum regulatory assessment fee of up to \$1,000. The statute was amended to enable the Commission to reduce the shortfall in the amount of fees paid by telecommunications companies for the cost of their regulation. The statute gives the Commission the discretion to set

different amounts depending on the type of service provided by a company, which amount must be related, to the extent practicable, to the cost of regulating each type of company. The minimum annual amount was last increased in 1990 from \$25 to \$50.

On December 5, 2006, the Commission voted to amend Rule 25-4.0161, as set forth in Attachment A, to increase the annual minimum amount each company must pay the Commission, from \$50 to the following amounts:

Local Exchange Company - \$1,000

Pay Telephone Service Provider - \$100

Shared Tenant Service Provider - \$100

Interexchange Company - \$700

Alternative Access Vendor - \$600

Competitive Local Exchange Company - \$600

Pursuant to the proposed rule, the minimum amounts would apply regardless of the company's gross operating revenues.

The Commission noticed its intent to amend Rule 25-4.0161 in the December 15, 2006, edition of the Florida Administrative Weekly. Affected persons had until January 5, 2007, to request a hearing or submit written comments on the proposed amendments to the rule.

On January 4, 2007, Global Dialtone, Inc. (Global or company) timely submitted written comments on the proposed rule. This recommendation addresses whether the Commission should make changes to the proposed rule based on those comments, or whether the proposed rule should be filed for adoption without changes.

The Commission has rulemaking authority pursuant to sections 120.54, 350.127(2), and 364.336, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission make changes to proposed Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, to address Global's comments?

Recommendation: No. The Commission should adopt proposed Rule 25-4.0161 without changes. (Cibula, Kennedy)

Staff Analysis: As stated in the case background, Global filed comments on proposed Rule 25-4.0161. In its comments, Global states that it disagrees with the Commission's means of obtaining the revenue required to cover the costs resulting from the Commission's handling of customer complaints, which was a basis for the Commission's decision to amend the rule. Global states that, instead of increasing the minimum regulatory assessment fee, the rule should be amended to increase the rate of the regulatory assessment fee, which is based on the gross operating revenue of each company. Global asserts that because gross operating revenues are more directly related to customer base, increasing the percentage of gross operating revenues would be a better means of covering the Commission's costs resulting from the handling of consumer complaints.

Global proposes that the Commission increase the regulatory assessment fee from the amount of 0.0020 of gross operating revenues derived from intrastate business to an amount up to the maximum permitted by law. Global states that the minimum regulatory assessment fees for IXCs and CLECs should remain at the existing \$50.

Global states that "[i]t is well known that small CLECs and IXCs have been under considerable financial pressure to remain in business." It asserts that the proposed rule amendment would result in the company paying an annual regulatory payment of \$1,300, which it contends would be "very burdensome." It states that amending the rule instead to increase the regulatory assessment fee based on gross operating revenues would have a more proportional relationship to the costs of handling consumer complaints.

The Commission has addressed ways to overcome shortfalls in the amount of revenues needed to cover the cost of regulating telecommunications companies in other rulemakings. By Order No. PSC-04-1175-FOF-TP, in Docket No. 040436-TP, issued November 30, 2004, which also amended Rule 25-4.0161, the Commission increased the regulatory assessment fee from 0.0015 to 0.0020 of intrastate gross operating revenues derived from intrastate business. The higher rate became effective on January 1, 2005.

In Order No. PSC-04-1175-FOF-TP, the Commission indicated that more changes may be needed to more equitably spread the costs of regulation across the various telecommunications subindustries. In this regard, the Commission stated that it would:

. . .pursue an amendment to section 364.336, Florida Statutes, to authorize us to, by rule, assess a minimum regulatory assessment fee in an amount up to \$1,000

with the authority to set different minimum fees depending on the type of service provided by the telecommunications company.

The Legislature amended section 364.336, Florida Statutes, in 2005, authorizing the Commission to charge telecommunications companies a minimum regulatory assessment fee of up to \$1,000. The Legislature also provided in section 364.336 that the minimum amount may vary depending on the type of service provided by the telecommunications company and that the minimum amount shall, to the extent practicable, be related to the cost of regulating such type of company.

Staff believes that the minimum regulatory assessment fees set forth in proposed Rule 25-4.0161 comply with the Legislatures' direction in section 364.336. The proposed minimum regulatory assessment fee amounts encompass several readily measured recurring costs associated with regulating telecommunications companies, including: 1) the cost of maintaining basic contact information about the company; 2) the cost of collecting regulatory assessment fee payments from each company; 3) some of the cost related to the consumer complaint process; and 4) the cost to review interexchange company tariffs at the time of registration.

In its comments, Global states that the minimum regulatory assessment fees set forth in proposed Rule 25-4.0161 do not have any proportional relationship to the costs of handling consumer complaints.¹ Staff disagrees. The costs related to the consumer complaint process are directly proportional to the numbers of complaints associated with each subindustry. While it may be true that some companies have fewer complaints than others, the fees in the proposed rule are based on the average cost per company for the Commission's handling of complaints within each subindustry. If the minimum regulatory assessment fees were to remain the same, as proposed by Global, the Commission will not collect sufficient revenues to cover the costs of regulating each subindustry.

Staff also disagrees with Global's proposal to increase the rate of the regulatory assessment fee from 0.0020 to the maximum rate allowable under section 364.336, 0.0025 of gross operating revenue derived from intrastate business, in lieu of increasing the minimum regulatory assessment fee. Staff believes that increasing the regulatory assessment fee to the maximum rate would, at this time, result in the Commission collecting more revenue than necessary to regulate telecommunications companies.²

Staff believes that the proposed minimum regulatory fee for each subindustry accurately reflects the Commission's costs associated with maintaining basic contact information, collecting regulatory assessment fees, handling consumer complaints, and reviewing interexchange

¹ Global states that under the proposed rule it would have to pay a minimum regulatory assessment fee of \$1,300. Staff notes that Global is a registered interexchange company and a certificated competitive local exchange company. Thus, the \$1,300 figure that Global refers to in its comments is the sum of \$700, the minimum under the proposed rule for an interexchange company, and \$600, the minimum under the proposed rule for a competitive local exchange company.

² As discussed above, the Commission amended Rule 25-4.0161 to increase the rate of the regulatory assessment fee from 0.0015 to 0.0020 of intrastate gross operating revenues derived from intrastate business in Docket No. 040436-TP. The higher rate became effective on January 1, 2005.

Docket No. 060668-TP

Date: March 1, 2007

company tariffs at the time of registration. Therefore, staff recommends that the Commission should adopt proposed Rule 25-4.0161 without changes.

Docket No. 060668-TP

Date: March 1, 2007

Issue 2: Should Rule 25-4.0161 be filed for adoption with the Secretary of State and the docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, the rule may be filed with the Secretary of State and the docket should be closed. (Cibula)

Staff Analysis: If the Commission votes to adopt Rule 25-4.0161 without changes, as staff is recommending in Issue 1, the rule may be filed for adoption with the Secretary of State. The docket should then be closed.