

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: August 7, 2008

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Miller, Cibula)
Division of Regulatory Compliance (Mailhot, Salak)
Division of Economic Regulation (Dickens)

RE: Docket No. 080159-TP – Joint petition to initiate rulemaking to adopt new rule in Chapter 25-24, F.A.C., amend and repeal Rules in Chapter 25-4, F.A.C., and amend rules in Chapter 25-9, F.A.C., by Verizon Florida LLC, BellSouth Telecommunications, Inc. d/b/a AT&T Florida, Embarq Florida, Inc., Quincy Telephone Company d/b/a TDS Telecom, and Windstream Florida, Inc.

AGENDA: 08/19/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

RULE STATUS: Proposal may be deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\080159.RCM.DOC

Case Background

On March 14, 2008, Verizon Florida LLC, BellSouth Telecommunications, Inc. d/b/a AT&T Florida, Embarq Florida, Inc., Quincy Telephone Company d/b/a TDS Telecom and Windstream Florida, Inc., (jointly referred to herein as “Petitioners”) filed a petition to initiate rulemaking pursuant to Section 120.54(7), Florida Statutes (F.S.), and Rules 28-103.006 and 25-22.017(2), Florida Administrative Code (F.A.C.). The Petitioners requested that the Commission initiate rulemaking to amend and repeal rules in Chapter 25-4, F.A.C., amend rules in Chapter

25-9, F.A.C., and adopt a new rule, “in order to update the Commission’s rules to reflect Florida’s highly competitive telecommunications market.”

On April 8, 2008, the Commission approved the request to initiate rulemaking to adopt Rule 25-4.008; to amend Rules 25-4.017, 25-4.0174, 25-4.0175, 25-4.0178, 25-4.022, 25-4.034, 25-4.040, 25-4.067, 25-4.079, 25-9.034 and 25-9.044, F.A.C.; and repeal Rules 25-4.006, 25-4.007, 25-4.019, 25-4.024, 25-4.039, 25-4.046, and 25-4.116, F.A.C. In addition, staff included additional rules in the notice to initiate rulemaking, which staff believes may require amendment or repeal. Those rules are Rule 25-4.002, Application and Scope; Rule 25-4.003, Definitions; Rule 25-4.021, System Maps and Records; Rule 25-4.077, Metering and Recording Equipment; Rule 25-4.215, Limited Scope Proceedings; Rule 25-9.001, Application and Scope; and Rule 25-14.001, In General.

On May 14, 2008, a staff rule development workshop was held to discuss all of the rules included in the petition and the rules identified by staff. On June 20, 2008, post-workshop comments were filed by interested persons.

Upon review of the information gathered at the workshop and the post-workshop comments, it was clear that interested persons and staff were in general agreement that Rules 25-4.003, 25-4.017, 25-4.0174, 25-4.0175, 25-4.0178, 25-4.040, 25-4.079, 25-4.215, and 25-14.001 should be amended. There also appeared to be agreement that Rules 25-4.006, 25-4.007, 25-4.021, 25-4.024, 25-4.039, 25-4.077, and 25-4.116 should be repealed.

This recommendation addresses whether the Commission should propose the amendment of Rules 25-4.003, 25-4.017, 25-4.0174, 25-4.0175, 25-4.0178, 25-4.040, 25-4.079, 25-4.215, and 25-14.001, F.A.C., and the repeal of Rules 25-4.006, 25-4.007, 25-4.021, 25-4.024, 25-4.039, 25-4.077, and 25-4.116, F.A.C. Thus, six of the 11 rule amendments and five of the seven rule repeals requested by the Petitioners are addressed.

This recommendation does not address the adoption of Rule 25-4.008, F.A.C., Streamlined Regulation for Telecommunications Markets and Companies, also called the “competition test” rule, nor the amendment of other rules in the Joint Petition. A Commission workshop has been scheduled on September 10, 2008, to further examine the remaining rules.

The Commission has jurisdiction pursuant to Section 120.54, F.S., and Chapter 364, F.S.

Discussion Of Issues

Issue 1: Should the Commission propose the amendment of Rules 25-4.003, 25-4.017, 25-4.0174, 25-4.0175, 25-4.0178, 25-4.040, 25-4.079, 25-4.215 and 25-14.001, F.A.C.?

Recommendation: Yes, the Commission should propose the amendment of these rules as set forth in Attachment A. (Miller, Cibula, Mailhot, Salak).

Staff Analysis: As stated in the case background, it became apparent after a review of the information gathered at the May 14, 2008, rule development workshop and the June 20, 2008, post-workshop comments that there was agreement that certain rules in this docket should be amended. These rules are set forth in Attachment A and are discussed below.

Staff is recommending that a number of rules be amended to clarify that the rules only apply to rate-of-return regulated companies. Pursuant to law enacted in 1995, local exchange telecommunications companies were given the option to elect price cap regulation. Companies that opt for price cap regulation are exempt from Commission rules pertaining to rate-of-return regulation. However, as pointed out by the Petitioners, a number of Commission rules do not expressly indicate that they apply only to rate-of-return regulated companies. To clarify that the rules apply only to rate-of-return regulated companies, staff recommends that the rules be amended as follows:

- Rule 25-4.003, Definitions (p. 8) – language should be added to the rule to define “price regulated local exchange telecommunications company” and “rate-of-return regulated local exchange telecommunications company.” The current rules use the term “rate-of-return” but there is no definition. This amendment should help clarify which rules apply only to rate-of-return regulated companies.
- Rule 25-4.017, Uniform System of Accounts (p. 15) – the title of the rule should be amended to refer to “Rate-of-Return Regulated Local Exchange Companies.”
- Rule 25-4.0174, Uniform System and Classification of Accounts (p. 16) – the title of the rule should be amended to refer to “Depreciation Accounts for Rate-of-Return Regulated Local Exchange Companies.”
- Rule 25-4.0175, Depreciation (p. 21) – the title of the rule should be amended to refer to “Depreciation for Rate-of-Return Regulated Local Exchange Companies.”
- Rule 25-4.0178, Retirement Units (p. 29) – the title of the rule should be amended to refer to “Retirement Units for Rate-of-Return Regulated Local Exchange Companies.
- Rule 25-4.215, Limited Scope Proceedings (p. 40) – language should be added to the rule to clarify that it only applies to rate-of-return regulated companies.

- Rule 25-14.001, In General (p. 40) – language should be added to clarify that the rule does not apply to competitive local exchange companies or price regulated local exchange companies.

Staff also recommends that the Commission amend Rule 25-4.040 (p. 33), Telephone Directories; Directory Assistance. Currently, the rule contains language about starting dates by which companies must begin complying with the rule. These dates have passed and are no longer relevant. Thus, the language should be deleted from the rule.

There is also language in Rule 25-4.040 regarding what a company must do when “911” service is not provided in an exchange. “911” service is now provided in all exchanges. Thus, staff recommends that this provision of the rule be deleted because it is obsolete.

Staff also recommends that a sentence be added to Rule 25-4.040 to allow companies to identify customer payment locations by listing a website and a toll-free number. The Petitioners proposed that the rule allow them to simply identify where customer payment locations can be found, such as on a website. However, staff believes that simply listing a website may not be adequate for those customers that do not have a computer. Instead, staff recommends that, if companies choose to list payment locations on a website, they also be required to list a toll-free number in their directory for customers to call to identify the payment locations.

Staff recommends amendments to Rule 25-4.079 (p. 38), Hearing/Speech Impaired Persons. The rule currently requires companies to provide specialized customer equipment for lease or sale to hearing/speech impaired persons. The Petitioners pointed out that the Florida Telecommunications Relay, Inc. (FTRI) provides equipment for hearing/speech impaired persons at no cost. The Petitioners believe, and staff agrees, that Rule 25-4.079 should be amended to reflect this current practice of the FTRI. Staff also recommends that the rule be amended to require each LEC to inform persons inquiring about hearing/speech impaired equipment about the FTRI.

Statement of Estimated Regulatory Cost (SERC)

The Statement of Estimated Regulatory Costs (Attachment C) notes that the proposed amendments should make it simpler for rate-of-return regulated companies and price regulated companies to identify which rules apply to them. The SERC also notes that the elimination of ambiguous language may result in lower transaction costs.

Based on the above, staff recommends that the Commission propose the amendment of Rules 25-4.003, 25-4.017, 25-4.0174, 25-4.0175, 25-4.0178, 25-4.040, 25-4.079, 25-4.215, and 25-14.001, as set forth in Attachment A.

Issue 2: Should the Commission propose the repeal of Rules 25-4.006, 25-4.007, 25-4.021, 25-4.024, 25-4.039, 25-4.077, and 25-4.116, F.A.C.?

Recommendation: Yes, the Commission should propose the repeal of these rules as set forth in Attachment B. (Miller, Cibula, Mailhot, Salak)

Staff Analysis: A review of the information gathered at the staff rule development workshop and the post-workshop comments also revealed agreement between staff and interested persons on a number of rules that should be repealed. These rules are set forth in Attachment B and are discussed below.

Staff recommends that Rule 25-4.006 (p. 42), Issuance of Certificate in the Event of Failure to Furnish Adequate Service, be repealed. The rule is no longer needed because it is obsolete as it assumes there is only one certificate holder per territory.

Staff also believes that Rule 25-4.007, Reference to Commission (p. 42), is not needed. Rule 24-4.007 allows any party in interest to apply in writing to the Commission for an interpretation of the Commission's rules and regulations. In effect, this rule allows interested persons to request a declaratory statement from the Commission on its rules. Section 120.565, F.S., and Chapter 28-105, F.A.C., already address the procedure for requesting a declaratory statement from the Commission. Thus, staff recommends that Rule 25-4.007 be repealed because it is redundant of the declaratory statement provisions.

Rule 25-4.021, System Maps and Records (p. 42), requires a company to keep maps and records to show the location and description of its toll and exchange plant facilities and the extent of area served by the company. However, Rule 25-4.034, which pertains to tariffs, requires each company to file, as an integral part of its tariff, maps defining the exchange service areas. Thus, Rule 25-4.021 should be repealed because it requires companies to keep information which the Commission already has on file.

Rule 25-4.024, Held Applications for Service (p. 43), requires companies to maintain a record of each application for access lines received during periods when a company is unable to supply initial or additional telephone service to applicants within 30 days of the date the applicant wants service. This rule requires similar information required by Rule 25-4.066, which pertains to the availability of service for a telecommunications company. Thus, staff recommends that Rule 25-4.024 be repealed.

Rule 25-4.039, Traffic (p. 43), requires companies to adopt operating methods to provide efficient service to customers and instructs telephone operators and service observing personnel to comply with applicable statutes in maintaining secrecy of communications. Section 364.24, F.S., sets out penalties for disclosing the contents or substance of any message or communication by customers and customer account information. Staff recommends that Rule 25-4.039 be repealed because it is redundant of Section 364.24, F.S.

Staff also recommends that Rule 25-4.077 (p. 44), Metering and Recording Equipment, be repealed. The rule is not needed because it is outdated and refers to mechanical and electronic equipment which is not used by the companies.

Rule 25-4.116, Telephone Number Assignment Procedure (p. 44), requires each company to maintain written standard operating procedures for the assignment of telephone numbers and requires that the procedures be applied in a non-discriminatory manner to requests for assignment. Currently, the North American Numbering Plan Administrator (NANPA) sets forth the procedure the companies must follow when assigning telephone numbers. Staff believes that Rule 25-4.116 should be repealed because it adds little to NANPA's requirements.

Statement of Estimated Regulatory Costs (SERC)

The SERC (Attachment D) addresses the proposed repeals. It notes that the proposed repeals would eliminate obsolete regulation and unnecessary regulatory oversight. It also states that there should be no costs on customers or small business as a result of the repeal of these rules.

Based on the above, staff recommends that the Commission propose the repeal of Rules 25-4.006, 25-4.007, 25-4.021, 25-4.024, 25-4.039, 25-4.077, and 25-4.116, F.A.C., as set forth in Attachment B.

Docket No. 080159-TP

Date: August 7, 2008

Issue 3: Should this docket be closed?

Recommendation: No. (Miller)

Staff Analysis: If no requests for hearing or comments are filed, the rules may be filed with the Department of State. The docket should remain open to proceed forward with the development of the rules that remain in this docket.