

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: October 30, 2008

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Cowdery, Miller)
Division of Regulatory Compliance (Harvey, Mailhot, Salak, Simmons)
Division of Economic Regulation (Hewitt)
Division of Service, Safety & Consumer Assistance (Moses)

RE: Docket No. 080641-TP – Initiation of rulemaking to amend and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to telecommunications.

AGENDA: 11/13/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\080641.RCM.DOC

Case Background

Staff initiated this rulemaking to examine whether 53 telecommunications rules in Chapter 25-4 and 25-9, Florida Administrative Code (F.A.C.), should be amended, repealed, or no longer apply to telecommunications companies.¹ Staff evaluated the rules to identify and

¹ The 53 rules being addressed in this docket are Rules 25-4.002, Application and Scope; 25-4.0185, Periodic Reports; 25-4.019, Records and Reports in General; 25-4.020, Location and Preservation of Records; 25-4.0201, Audit Access to Records; 25-4.022, Complaint - Trouble Reports, Etc.; 25-4.023, Report of Interruptions; 25-4.034, Tariffs; 25-4.046, Incremental Cost Data Submitted by Local Exchange Companies; 25-4.066, Availability of Service; 25-4.067, Extension of Facilities - Contributions in Aid of Construction; 25-4.069, Maintenance of Plant and Equipment; 25-4.070, Customer Trouble Reports; 25-4.071, Adequacy of Service; 25-4.072, Transmission

correct deficiencies in the rules, clarify and simplify rules as necessary, delete obsolete and unnecessary rules, delete rules that are redundant of statutes, improve efficiency, reduce paperwork, or decrease costs to government and the private sector, and to consider the impact of the rules on small business.² The notices initiating rule development appeared in the September 26, 2008 edition of the Florida Administrative Weekly.

A staff workshop was held on October 10, 2008, to obtain input from affected persons. Appearances were made by representatives of BellSouth Telecommunications, Inc. d/b/a AT&T Florida, Embarq Florida Inc., Quincy Telephone Company d/b/a TDS Telecom, Verizon Florida LLC, Windstream Florida, Inc.,³ Competitive Carriers of the South, Inc. (CompSouth), Florida Cable Telecommunications Association (FCTA), the Office of Public Counsel (OPC), AARP, the Florida Office of the Attorney General, and the Communications Workers of America (CWA).

During the course of the workshop, it was determined that participants had no objections to staff's proposal that Rules 25-4.020, 25-4.022, 25-4.034, 25-4.115, 25-4.117, 25-9.001, 25-9.002, 25-9.005, 25-9.009, 25-9.022, 25-9.027, 25-9.029 should be amended and that Rules 25-4.019, 25-4.069, 25-4.112, 25-4.200, 25-9.008, 25-9.032 should be repealed.

This recommendation addresses whether the Commission should propose the amendment of Rules 25-4.020, 25-4.022, 25-4.034, 25-4.115, 25-4.117, 25-9.001, 25-9.002, 25-9.005, 25-9.009, 25-9.022, 25-9.027, and 25-9.029 and the repeal of Rules 25-4.019, 25-4.069, 25-4.112, 25-4.200, 25-9.008, and 25-9.032, F.A.C.⁴ The remaining 21 rules which were noticed in this

Requirements; 25-4.073, Answering Time; 25-4.074, Intercept Service; 25-4.083, Preferred Carrier Freeze; 25-4.085, Service Guarantee Program; 25-4.107, Information to Customers; 25-4.108, Initiation of Service; 25-4.109, Customer Deposits; 25-4.110 Customer Billing for Local Exchange Telecommunications Companies; 25-4.112 Termination of Service by Customer; 25-4.113 Refusal or Discontinuance of Service by Company; 25-4.115 Directory Assistance; 25-4.117, 800 Service; 25-4.200, Application and Scope; 25-4.202, Construction; 25-4.210, Service Evaluations and Investigations; 25-9.001, Application and Scope; 25-9.002, Definitions; 25-9.003, Information to Public; 25-9.004, General Filing Instructions; 25-9.005, Information to Accompany Filings; 25-9.006, Size and Form of Tariffs; 25-9.008, Telephone Utility Tariffs; 25-9.009, Numbering and General Data Required for Each Sheet; 25-9.010, Numbering of Supplements and Additions; 25-9.020, Front Cover; 25-9.021, Title Page; 25-9.022, Table of Contents; 25-9.023, Description of Territory Served; 25-9.024, Miscellaneous; 25-9.025, Technical Terms and Abbreviations; 25-9.026, Index of Rules and Regulations; 25-9.027, Rules and Regulations; 25-9.029, Index of Rate or Exchange Schedules; 25-9.030, Rate Schedules – General; 25-9.032, Telephone Utility Exchange Schedules; 25-9.034, Contracts and Agreements; 25-9.044, Change of Ownership; 25-9.045, Withdrawal of Tariffs.

² Staff notes that Section 120.74, Florida Statutes (F.S.), requires that each agency review and revise its rules as often as necessary to ensure that its rules are correct and comply with statutory requirements.

³ These companies are the Joint Petitioners in 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.

⁴ If Rule 25-9.001 is amended as staff is recommending in Issue 1, an additional 14 rules in Chapter 25-9, F.A.C., would no longer apply to incumbent local exchange companies (ILECs). However, no change to the text of the rule is required. This is discussed in Issue 1.

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docket will be addressed in a later staff recommendation after additional evaluation of those rules has been completed.

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

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rules 25-4.020, 25-4.022, 25-4.034, 25-4.115, 25-4.117, 25-9.001, 25-9.002, 25-9.005, 25-9.009, 25-9.022, 25-9.027, and 25-9.029, F.A.C.?

Recommendation: Yes, the Commission should propose the amendment of these rules as set forth in Attachment A. Staff also recommends that the notice of rulemaking contain language stating that none of the rule amendments are intended to impact in any way wholesale service or the SEEM (Self-Effectuating Enforcement Mechanism) plan, the SEEM metrics or payments, or the type of data that must be collected and analyzed for purposes of the SEEM plan. (Cowdery, Mailhot, Salak, Moses).

Staff Analysis: As stated in the Case Background, it became apparent after a review of the information gathered at the October 10, 2008, rule development workshop that there was agreement that certain rules in this docket should be amended. These rules are set forth in Attachment A. Staff is recommending that these rules be amended, as discussed below.

Rule 25-4.020, Location and Preservation of Records (p. 11), should be amended to add language concerning working conditions provided by companies to Commission staff at times when staff makes visits to the companies for audits or record reviews. This language is currently included in Rule 25-4.019, Records and Reports in General, which is being proposed for repeal in Issue 2.

Rule 25-4.022, Complaint-Trouble Reports, Etc. (p. 12), should be amended to eliminate the references to record retention for trouble reports and responses in writing to customer complaints. Rule 25-4.022 should be amended because the record retention requirements for trouble reports are redundant of other rules. Record retention requirements for trouble reports are already included in Rule 25-4.020(3), as specified in Form PSC/ERC/17T (5/93) "Schedule of Records and Periods of Retention." In addition, subsection (1) of Rule 25-4.111, Customer Complaints and Service Requests, requires a company to respond to all complaints within 15 days. As amended, the rule would continue to require telephone companies to maintain for a minimum of six months all signed written complaints made by their subscribers regarding service or errors in billing.

Rule 25-4.034, Tariffs (p. 13), contains certain requirements for the content and maintenance of tariffs filed by telecommunications companies. The rule incorporates by reference the requirements of Chapter 25-9, Construction and Filing of Tariffs by Public Utilities. Currently, most of the specific rules related to tariffs and tariff filings for telephone companies are contained in Chapter 25-9. Staff believes that tariff requirements would be made clearer by including all of the tariff requirements applicable to telephone companies within Rule 25-4.034, rather than splitting the requirements between two different chapters of the Florida Administrative Code. Thus, staff recommends that the specific tariff and tariff filings requirements applicable to ILECs should be moved from Chapter 25-9 to Rule 25-4.034.

In this regard, staff recommends that the applicable tariff and tariff filing requirements related to ILECs be rewritten, deleted from Chapter 25-9, and included in Subsections (1), (2), (5), (6), and (7) of Rule 25-4.034. Subsection (1) of Rule 25-4.034 should be amended to delete the reference to tariff requirements of Chapter 25-9, F.A.C., and to add tariff requirements concerning contract service arrangements. Subsection (2) of Rule 25-4.034 should be amended to include the requirements for filing tariffs with the Division of Regulatory Compliance. Subsection (4) of Rule 25-4.034 should be amended to allow a company to make copies of its retail tariffs available for public inspection by either a printed or an electronic copy. Subsection (5) of Rule 25-4.034 should be amended to include the requirement that companies shall charge only the rates and credits contained in their tariffs and provide the requirements for temporarily deviating from the tariffed rates and credits. Subsection (6) of Rule 25-4.034 should be amended to include the format conventions required for tariffs. Subsection (7) of Rule 25-4.034 should be amended to require the filing of a coded copy of each tariff sheet showing changes to the existing tariff sheet being filed.

As discussed above, the rules in Chapter 25-9 currently apply to telephone, electric, gas, water and wastewater utilities. Because staff is recommending that all tariff requirements for ILECs be contained in Rule 25-4.034, staff is also recommending a number of amendments to Chapter 25-9 to remove all references to telephone companies.

Rule 25-9.001, Application and Scope (p. 17), currently states that Chapter 25-9 applies to telecommunications companies. Staff recommends that Rule 25-9.001 be amended to state that incumbent local exchange companies (ILECs) are excluded from Chapter 25-9. Because Chapter 25-9 does not currently apply to competitive local exchange companies (CLECs), staff recommends that Rule 25-9.001 be amended to clarify that Chapter 25-9 does not apply to CLECs. Staff also recommends that Rules 25-9.002 (p. 18), 25-9.005 (p. 19), 25-9.009 (p. 21), 25-9.022 (p. 23), 25-9.027 (p. 23), and 25-9.029 (p. 23) be amended to remove all references to telephone companies, consistent with staff's recommended change to Rule 25-9.001.

As a result of the amendment to Rule 25-9.001 to exclude ILECs from Chapter 25-9 by moving the specific tariff and tariff filing requirements to Rule 25-4.034, 14 additional rules included in Chapter 25-9 would no longer apply to ILECs.⁵ However, because the text of these rules do not specifically reference telephone companies, no rule language needs to be amended in order to effect this change. These rules would continue to be effective as to other public utilities. References to Chapter 364 in the specific authority and law implemented sections of these rules will be deleted by sending a letter to the Department of State when the other rule amendments discussed above become effective, to inform the department of the technical changes to the rules.

Rule 25-4.115, Directory Assistance (p. 16), should be amended to delete paragraphs (1)(a) and (b) and (2)(b), (c) and (d). The rule would continue to state, however, that there shall

⁵ These rules are: Rules 25-9.003, Information to Public, 25-9.004, General Filing Instructions, 25-9.006, Size and Form of Tariffs, 25-9.010, Numbering of Supplements and Additions, 25-9.020, Front Cover, 25-9.021, Title Page, 25-9.023, Description of Territory Served, 25-9.024, Miscellaneous, 25-9.025, Technical Terms and Abbreviations, 25-9.026, Index of Rules and Regulations, 25-9.030, Rate Schedules – General, 25-9.034, Contracts and Agreements, 25-9.044, Change of Ownership, and 25-9.045, Withdrawal of Tariffs.

be no charge for directory assistance calls from lines or trunks serving individuals with disabilities. The provisions recommended for deletion address: Charges for directory assistance, require charges for directory assistance to be stated in the tariffs filed with the Commission, and require that the tariffs state the number of telephone numbers that may be requested by a customer per directory assistance call. Staff is recommending that these sections be deleted because they are unnecessary and redundant and because they will be sufficiently addressed in amended Rule 25-4.034. Amended Rule 25-4.034 requires that companies shall charge only the rates, charges, and credits contained in their tariffs, the conditions and circumstances under which service will be furnished, and all general rules and regulations governing the relation of customer and company.

Rule 25-4.117, 800 Service (p. 17), prohibits telephone companies from billing or collecting from the originating caller any charges for calls to an 800 service subscriber. Staff recommends that Rule 25-4.117 be amended to update the rule to include other toll free numbers which have been implemented since the time the rule was first adopted. This rule applies only to intrastate calls. Based upon input from the rule development workshop, staff also recommends clarifying the language of the rule to specifically state that this rule applies to intrastate calls.

At the September 10, 2008, rule development workshop, CompSouth requested that the following language be included in any notice of rulemaking issued in this docket:

None of the rule amendments or repeals are intended to impact in any way wholesale service or the SEEM (Self-Effectuating Enforcement Mechanism) plan, the SEEM metrics or payments, or the type of data that must be collected and analyzed for purposes of the SEEM plan.

It is staff's opinion that the amendments of the above rules are not intended to impact wholesale service or the SEEM plan. Staff has no objection to including the proposed language in any notice of rulemaking issued in this docket.

Statement of Estimated Regulatory Cost (SERC)

The SERC (Attachment C) notes that the proposed amendments are intended to simplify, streamline, and clarify the rules. The SERC also notes that these rule changes would benefit the Commission and customers by having more simple, streamlined, and clarified rules, and that utilities' administrative costs would likely decrease.

Based upon the above, staff recommends that the Commission propose the amendment of Rules 25-4.020, 25-4.022, 25-4.034, 25-4.115, 25-4.117, 25-9.001, 25-9.002, 25-9.005, 25-9.009, 25-9.022, 25-9.027, and 25-9.029, F.A.C., as set forth in Attachment A. Staff also recommends that the notice of rulemaking contain language stating that none of the rule amendments are intended to impact in any way wholesale service or the SEEM (Self-Effectuating Enforcement Mechanism) plan, the SEEM metrics or payments, or the type of data that must be collected and analyzed for purposes of the SEEM plan.

Issue 2: Should the Commission propose the repeal of Rules 25-4.019, 25-4.069, 25-4.112, 25-4.200, 25-9.008, and 25-9.032, F.A.C.?

Recommendation: Yes, the Commission should propose the repeal of these rules as set forth in Attachment B. Staff also recommends that the notice of rulemaking contain language stating that none of the rule repeals are intended to impact in any way wholesale service or the SEEM (Self-Effectuating Enforcement Mechanism) plan, the SEEM metrics or payments, or the type of data that must be collected and analyzed for purposes of the SEEM plan. (Cowdery, Mailhot, Salak, Moses)

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

Rule 25-4.019, Records and Reports (p. 25), requires each utility to furnish to the Commission the results of any required tests and summaries of any required records, and any information concerning the utility's facilities or operations which the Commission may reasonably request and require. The rule also provides for separation of records under certain circumstances, and addresses requirements regarding staff visits to company offices or other places of business within or outside Florida for inspection purposes.

Staff recommends that Rule 25-4.019 be repealed. Subsection (1) of Rule 25-4.019 is unnecessary because it adds little to Section 364.183, F.S., Access to Company Records, which grants the Commission access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the Commission's jurisdiction. Subsection (2) of Rule 25-4.019 requires that records must be separated in such a manner that the results of the telephone operation may be determined at any time. The requirement of Subsection (2) is unnecessary because Rule 25-4.017, Uniform System of Accounts, specifies how records are to be kept.

Subsection (3) of Rule 25-4.019 allows the Commission staff, upon notification to the utility, to make personal visits to the company offices for inspection purposes. Subsection (3) is unnecessary because it adds nothing to the language of Section 364.185, F.S., Investigations and Inspections; Power of Commission. The provision in this subsection requiring Commission staff to present identification is obsolete because the statutory authority for this requirement, Section 364.18, F.S., Inspection of Accounts and Records of Companies, does not apply to price regulated ILECs. The requirement in Subsection (3) of Rule 25-4.019 that staff be provided with appropriate working conditions is being reworded and moved to Rule 25-4.020, as discussed in Issue 1. Thus, staff recommends that Rule 25-4.019 be repealed because its provisions are unnecessary, obsolete, or have been moved to a different rule.

Rule 25-4.069, Maintenance of Plant and Equipment (p. 25), is a one sentence rule which requires each telecommunications company to adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe, adequate, and continuous service at all times. Staff recommends that Rule 25-4.069 be repealed because Rules 25-4.036, Design and Construction of Plant, and Rule 25-4.038, Safety, provide more specific

requirements related to safe, adequate, and continuous service than are provided by Rule 25-4.069. Rule 25-4.036 requires plant and facilities to be designed, constructed, installed, maintained, and operated in accordance with the provisions of the National Electrical Safety Code (IEEE C2-2007) and the National Electrical Code (NFA 70-2005). Rule 25-4.038, Safety, requires each utility to properly warn and protect the public from danger, exercise due care to reduce the hazards to persons who may come into contact with the company's equipment and facilities, and requires the utility to make certain installations to prevent harm to the public pursuant to Articles 800.30 and 800.31 of the National Electric Code. Because Rules 25-4.036 and 25-4.038 specify maintenance, operation, and safety requirements for plant and equipment, staff believes that Rule 25-4.069 is unnecessary and redundant and that it should be repealed.

Rule 25-4.112, Termination of Service by Customer (p. 26), states:

Any customer may be required to give reasonable notice of his intention to discontinue service. Until the telephone utility shall be notified, the customer may be held responsible for charges for telephone service.

Staff recommends that this rule be repealed because it is unnecessary. Because of this rule's permissive nature, the ILEC is under no obligation to set a notice period. If the rule is repealed, this situation would not change – the ILEC still would be under no obligation to set a notice period, but still would have the latitude to do so. A notice provision is inherently a condition of service. Rule 25-4.034(1) requires each ILEC to maintain on file with the Commission tariffs which set forth the conditions and circumstances under which service will be furnished and all general rules and regulations governing the relationship with the customer. Therefore, any notice period would be set forth in tariffs filed with the Commission. If an ILEC were to impose an unreasonably long notice period, staff believes that this would constitute an anticompetitive practice which the Commission could address pursuant to Section 364.051(5), Florida Statutes. In addition, staff notes that the Commission has authority pursuant to Section 364.19, F.S., to regulate terms of telecommunications service contracts between ILECs and their customers. For the above reasons, staff believes that Rule 25-4.112 is unnecessary and should be repealed.

Rule 25-4.200, Application and Scope (p. 26), is the first rule in Part XI of Chapter 25-4, Streamlined Regulatory Procedures for Small LECs. Staff recommends repeal of Rule 25-4.200 because it simply restates the application and scope language found in Section 364.052(2)(b), F.S., which requires the Commission to adopt streamlined procedures for regulating small local exchange companies. For this reason, staff believes that Rule 25-4.200 is unnecessary and redundant and should be repealed.

Rule 25-9.008, Telephone Utility Tariffs (p. 26), contains a list of rules which apply to telephone and telegraph utility tariffs. In Issue 1, staff is recommending that Chapter 25-9 not apply to telephone companies, and instead that all telephone tariff provisions be included in Rule 25-4.034. The rules that are cross-referenced in Rule 25-9.008 that staff believes are necessary for tariff filings have been rewritten and included in amended Rule 25-4.034(6)(f), as discussed in Issue 1. Staff believes that the remaining rules that are cross-referenced in Rule 25-9.008 are overly prescriptive in terms of structure and formatting or duplicative of existing Rule 25-4.034

requirements. Thus, Rule 25-9.008 should be repealed consistent with staff's recommendation in Issue 1 to amend Rule 25-4.034 to contain all relevant telephone utility tariff requirements.

Rule 25-9.032, Telephone Utility Exchange Schedules (p. 27), contains the requirements concerning utility exchange schedules. This rule should be deleted because many of the information requirements are outdated, and Rule 25-4.034 requires that the company's tariff set forth all rates and charges and include maps defining the exchange service areas.

At the September 10, 2008, rule development workshop, CompSouth requested that the following language be included in any notice of rulemaking:

None of the rule amendments or repeals are intended to impact in any way wholesale service or the SEEM (Self-Effectuating Enforcement Mechanism) plan, the SEEM metrics or payments, or the type of data that must be collected and analyzed for purposes of the SEEM plan.

FCTA also requested that the Commission include this language in the notice of rulemaking if the Commission decides to repeal Rule 25-4.069.

It is staff's opinion that the repeal of the rules addressed above are not intended to impact wholesale service or the SEEM plan. Thus, staff has no objection to including the proposed language in any notice of rulemaking issued in this docket.

Statement of Estimated Regulatory Costs (SERC)

The SERC (Attachment C) addresses the proposed repeals. It notes that the proposed repeals are intended to simplify, streamline, and clarify the rules. The SERC also notes that the rule repeals would benefit the Commission and customers by having more simple, streamlined, and clarified rules, and that utilities' administrative costs would likely decrease.

Based on the above, staff recommends that the Commission propose the repeal of Rules 25-4.019, 25-4.069, 25-4.112, 25-4.200, 25-9.008, and 25-9.032, F.A.C., as set forth in Attachment B. Staff also recommends that the notice of rulemaking contain language stating that none of the rule repeals are intended to impact in any way wholesale service or the SEEM (Self-Effectuating Enforcement Mechanism) plan, the SEEM metrics or payments, or the type of data that must be collected and analyzed for purposes of the SEEM plan.

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Issue 3: Should this docket be closed?

Recommendation: No, this docket should not be closed. (Cowdery)

Staff Analysis: If no requests for hearing or comments are filed, the rules may be filed with the Department of State for adoption. The docket should remain open, however, for further consideration of the rules that remain in this docket.