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: August 6, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Cowdery, Miller, Cibula)
Division of Regulatory Compliance (Mailhot, Salak, Kennedy)
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: 08/18/09 – Regular Agenda – Rule Adoption – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

RULE STATUS: Adoption should not be deferred. F.A.W. notice issued indicating Commission would consider the written comments at August 18 agenda conference

SPECIAL INSTRUCTIONS: None

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

Case Background

The Commission published Notices of Rulemaking in the January 23, 2009 edition of the Florida Administrative Weekly, indicating its intent to amend Rules 25-4.002, 25-4.0185, 25-4.023, 25-4.066, 25-4.070, 25-4.071, 25-4.073, 25-4.074, 25-4.083, 25-4.107, 25-4.109, and 25-4.110, and repeal Rules 25-4.046, 25-4.067, and 25-4.108, Florida Administrative Code (F.A.C.). These rules may be generally characterized as telecommunications service quality rules. The purpose of the rules in Chapter 25-4 is to define reasonable service standards that will promote

the furnishing of adequate and satisfactory local and long distance service to the public and establish the rights and responsibilities of both the utility and customers.[1]

The notices required that any comments or requests for hearing on the proposed rules be filed with the Office of Commission Clerk by February 13, 2009. The Commission did not receive any requests for hearing on the proposed rules. However, 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. (together referred to herein as the Joint Petitioners) timely filed comments on the following proposed rules: Rule 25-4.066, Availability of Service; Rule 25-4.070, Customer Trouble Reports; Rule 25-4.073, Answering Time; and Rule 25-4.110, Customer Billing for Local Exchange Telecommunications Companies. The Communications Workers of America (CWA) submitted comments on proposed Rule 25-4.070, Customer Trouble Reports. The Florida Cable Telecommunications Association, Inc., (FCTA) timely filed comments on proposed Rule 25-4.083, Preferred Carrier Freeze. No comments were filed concerning the remaining proposed rules.[2]

On July 1, 2009, Committee Substitute (CS) for CS for Senate Bill 2626, the "Consumer Choice and Protection Act," now Chapter 2009-226, Laws of Fla., became effective. This law amended certain sections of Chapter 364, F.S., as addressed in this staff recommendation. Interested persons were given the opportunity to file supplemental comments to address the new law's impact on the Commission's proposed rules. Written comments were required to be received by the Office of the Commission Clerk by July 13, 2009. Written comments were timely filed by Joint Petitioners concerning proposed Rules 25-4.0185, 25-4.066, 25-4.070, 25-4.073, and 25-4.110, and by FCTA concerning Rule 25-4.083.

This recommendation addresses whether the Commission should make changes to proposed Rules 25-4.0185, 25-4.066, 25-4.070, 25-4.073, 25-4.110, and 25-4.083, F.A.C., based on the comments submitted by the Joint Petitioners, FCTA, and CWA.[3] The Commission has jurisdiction pursuant to Section 120.54 and Chapter 364, F.S.

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[1] Rule 25-4.002, Application and Scope, F.A.C.

[2] Amended Rules 25-4.002, 25-4.023, 25-4.071, 25-4.074, 25-4.107, and 25-4.109, and repealed Rules 25-4.046, 25-4.067, and 25-4.108, F.A.C., were filed with the Department of State on March 6, 2009 and became effective on March 26, 2009.

[3] If the Commission makes changes to proposed Rules 25-4.066, 25-4.070, or 25-4.073, there could be resultant changes to the language of proposed Form PSC/SSC 28, Periodic Reports, which is incorporated by reference into Rule 25-4.0185, Periodic Reports. For this reason, Rule 25-4.0185 was not filed with the Department of State even though no comments were filed specifically addressing that rule in the February 13, 2009 comments. Joint Petitioners' July 13, 2009, supplemental comments did address Rule 25-4.0185 and proposed Form PSC/SSC 28.

Discussion of Issues

Issue 1: Should the Commission adopt changes to proposed Rules 25-4.0185, Periodic Reports, 25-4.066, Availability of Residential Service, 25-4.070, Customer Trouble Reports for Residential Service, and 25-4.073, Answering Time for Residential Service, and 25-4.110, Customer Billing for Local Exchange Telecommunications Companies, F.A.C., based on comments filed by Joint Petitioners and by CWA?

Recommendation: The Commission should adopt some, but not all, of Joint Petitioners' suggested changes to proposed Rules 25-4.0185, 25-4.066, 25-4.070, 25-4.073, and 25-4.110, as set forth in Attachment A. The Commission should not adopt CWA's suggested changes to proposed Rule 25-4.070. (Cowdery, Miller, Salak, Mailhot, Moses)

Staff Analysis:

In their comments, Joint Petitioners suggest that the Commission make changes to proposed Rules 25-4.0185, 25-4.066, 25-4.070, 25-4.073, and 25-4.110, F.A.C., prior to filing the rules for adoption. Joint Petitioners note that Chapter 2009-226 modified Section 364.02(1), F.S., to limit the definition of "basic local telecommunications service" to "voice-grade, single-line, flat-rate residential local exchange service." In addition, they state that Section 364.15, F.S., was modified to limit the scope of the Commission's authority under that section to "basic local telecommunications service." Joint Petitioners assert that the legislative changes to these sections eliminate the Commission's authority to impose service quality rules on services other than basic local telecommunications service. They submit that because of these statutory amendments, the Commission should modify proposed Rules 25-4.0185, 25-4.066, 25-4.070, and 25-4.073 to reflect the limitation of the Commission's authority over service quality to basic local telecommunications service. Joint Petitioners conclude that applying these service quality rules to basic service only will provide a safety net to basic local telecommunications service customers while allowing the incumbent local exchange companies (ILECs) the flexibility needed to compete in Florida's current telecommunications market.

Staff notes that Chapter 2009-226, Laws of Fla., amended Chapter 364, F.S., such that the definition of "basic local telecommunications service" no longer includes flat-rate single-line business service, and the definition of "nonbasic service" was amended to state that any combination of basic service along with a nonbasic service or an unregulated service is nonbasic service.[4] Additionally, Section 364.051(5)(b), F.S., was amended to delete the language stating that the commission has continuing regulatory oversight of nonbasic services for purposes of ensuring resolution of service complaints.

Staff recommends that the Commission adopt Joint Petitioners' suggestion to amend proposed Rules 25-4.066, 25-4.070, and 25-4.073 to apply to basic residential service only,

[4] Prior to the enactment of Chapter 2009-226, Joint Petitioners argued in this docket that Rules 25-4.066, 25-4.070, and 25-4.073 should apply to basic service only because concerns about the need for service quality rules have focused on basic service, not on nonbasic service. As such, they recommended that these rules should not apply to customers with services provided as a package or bundle. Chapter 2009-226, Laws of Fla., adopted this regulatory approach.

which is consistent with the statutory changes.[5] In addition, proposed Rule 25-4.0185 should be amended to state that Schedules 2, 3, 11, and 15 of Form PSC/CMP 28[6] shall apply to basic residential service only.

Below is a summary of Joint Petitioners' suggested changes to the individual proposed rules, as well as staff's recommendation on the suggested changes.

Rule 25-4.0185, Periodic Reports and Form PSC/SSC 28

Rule 25-4.0185 (p. 20) requires local exchange telecommunications companies (LECs) to file certain engineering data requirements pursuant to schedules contained in Commission Form PSC/CMP 28 (p. 43), incorporated into the rule by reference. Commission Form PSC/CMP 28 requires the filing of schedules 2, 3, 8, 11, 15, 16, and 19.[7] The Commission proposed amending Rule 25-4.0185 to specify that schedules 2 and 3, filed pursuant to Rule 25-4.066, schedule 11, filed pursuant to Rule 25-4.073, and schedule 15, filed pursuant to Rule 25-4.073, shall apply to residential service only, consistent with the same proposed amendments to Rules 25-4.066, 25-4.070, and 25-4.073. The Commission also proposed amending schedules 2, 11, and 15 to reflect other corresponding proposed rule amendments. Schedule 8 was amended to clarify that reporting is required on a quarterly basis, consistent with Rule 25-4.0185. The Commission proposed amending Rule 25-4.0185 to delete the requirement of reporting schedules 16 and 19.

Joint Petitioners suggest changes to clarify the applicability of the proposed rule to basic local telecommunications service. They suggest that in subsection (2) of the rule, schedules 2 and 3 of Form PSC/CMP 28 should be deleted to reflect Joint Petitioners' suggested repeal of Rule 25-4.066.

Staff recommends that subsection (2) of proposed Rule 25-4.0185 be changed to state that schedules 2, 3, 11, and 15 of the Form PSC/CMP 28 shall apply to basic local telecommunications service only, consistent with the changes recommended by staff to proposed Rules 25-4.066, 25-4.070, and 25-4.073, as discussed below. In addition, staff recommends that Form PSC/CMP 28 be changed so that schedule 2 refers to basic local telecommunications service, instead of to the outdated and undefined term "primary."[8] Staff does not recommend that schedules 2 and 3 of Form PSC/CMP 28 be deleted, consistent with staff's recommendation that Rule 25-4.066 should not be repealed.

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[5] Staff's recommended changes to the proposed rules are highlighted in Attachment A. This format is used for all of staff's recommended changes.

[6] This form designation is being changed from PSC/CMP 28 to Form PSC/SSC 28 to reflect the division name change to the Division of Service, Safety and Consumer Assistance.

[7] These schedules are as follows: schedule 2, Completed New Primary Service Orders; schedule 3, Summary of Held Applications; schedule 8, Access Line Data; schedule 11, Repair Service-Trouble Reports; schedule 15, Answer Time; schedule 16, Answer Time-Business Office; schedule 19, Central Office NXX Data.

[8] After reviewing the proposed rule changes, the Joint Administrative Procedures Committee (JAPC) wrote a letter to staff that requested that Rule 25-4.0185 be referenced at the top of schedules 2, 3, 11, and 15 of proposed form PSC/SSC 28. These format changes are highlighted on the form in Attachment A in addition to the changes recommended by staff.

Joint Petitioners suggest in their supplemental comments to proposed Rule 25-4.0185, Periodic Reports, that a new subsection be added to 25-4.0185 which would provide that, where a company is not yet able to isolate and specifically provide basic local telecommunications service data, aggregate data may be submitted, however, any differences between the data submitted and that required by the rule will be identified. They also suggest that Rule 25-4.0185 state that upon request by the Commission, the LEC will provide any additional information required to determine compliance with Rule 25-4.070(3). Joint Petitioners assert that this change provides a mechanism for compliance with the rule until a company can transition its systems to identify and collect only reportable data.

Staff agrees with the concept suggested by Joint Petitioners. In order to give utilities time to adjust data reporting system to report only data concerning basic telecommunications service, staff recommends that a new subsection should be added to proposed Rule 25-4.0185 which states that each LEC shall begin recording data concerning solely basic telecommunications service for reporting on Schedules 2, 3, 11 and 15 no later than January 1, 2010. Staff believes that this is a reasonable amount of time for a company to put in place a system for collecting basic local telecommunications service data. It is important that Form PSC/CMP 28 specifically report data for basic local telecommunications service as required by rule in order for the Commission to properly enforce the requirements of Rules 25-4.066, 25-4.070 and 25-4.073.

Rule 25-4.066, Availability of Service

The Commission’s proposed Rule 25-4.066 (p. 20) pertains to telecommunications companies having sufficient facilities to provide service. The proposed rule clarifies that it applies to residential service only, and not to commercial or business service. Rule 25-4.066 requires that, where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary service shall be installed within an interval of three working days after receipt of application when all tariff requirements relating thereto have been complied with, except in certain instances including where broadband or video services are requested in addition to the telecommunications service. The proposed rule contains specific requirements that the company must follow in order to notify a service applicant about installation delay and circumstances and conditions under which service will be provided. The rule requires each company to report primary residential installation performance pursuant to Rule 25-4.0185, Periodic Reports.

The Joint Petitioners argue that this rule should be deleted in its entirety. They question the Commission’s authority to set the standards in this rule in light of the sunsetting of Carrier-of-Last Resort (COLR) obligations in Section 364.025(2), F.S. Joint Petitioners’ assert that there is no longer a statutory obligation for an ILEC to provide service to any specific person and, thus, there is no logical basis upon which to impose rules governing the availability of service. They assert that such matters should now be governed by each company’s service tariffs or schedules. Joint Petitioners state that to the extent that the Commission determines to retain this rule, it should be limited to basic local telecommunications service. As previously stated in this recommendation, staff recommends changing this rule to apply to basic local telecommunications service only. For this reason, staff recommends changing the title of the proposed rule from “Availability of Residential Service” to “Availability of Basic Local

Telecommunications Service," changing proposed subsection (1) from referencing "residential local telecommunications service" to "basic local telecommunications service," changing proposed subsection (2) from referencing "primary service" to "basic local telecommunications service," and changing proposed subsection (5) from referencing "basic residential" to "basic local telecommunications."

Joint Petitioners also suggest that the proposed rule should be changed to increase the installation interval from three to five days. In support, they state that "this will provide flexibility to ILECs to more efficiently schedule and deploy technicians, which will save money and allow the ILECs to compete more effectively with alternative providers who are not subject to this rule."

The proposed rule requires that, where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary service shall be installed within an interval of three working days after receipt of application when all tariff requirements relating thereto have been complied with, except where broadband or video services are requested in addition to the telecommunications service. Staff recommends deleting the proposed rule language "or when broadband or video services are requested in addition to the telecommunications service." This language is no longer necessary because limitation of this rule to basic services by definition does not include bundled services.

Staff does not believe that the sunsetting of ILECs' COLR obligations as set forth in Section 364.025(2), F.S., eliminates the Commission's authority to have equipment and facilities, installation, and reporting requirements and standards as set forth in Rule 25-4.066. Section 364.01(4)(a) states that the Commission shall exercise its exclusive jurisdiction in order to protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices. Section 364.01(2) specifies that the Legislature finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers. In addition, Rule 25-4.066 implements Section 364.15, F.S., Compelling Repairs, Improvements, Changes, Additions, or Extensions, which requires the Commission to make and serve an order directing that such actions be made as the Commission determines reasonably ought to be made, in order to secure adequate service or facilities for basic local telecommunications services. In implementing Section 364.15, F.S., Rule 25-4.066 sets parameters that ILECs are required to meet in providing basic local telecommunications service. Setting such standards by rule ensures uniform enforcement of the Commission's regulatory responsibilities exercised under Section 364.15, F.S.

Staff does not recommend that the Commission change Rule 25-4.066 to increase the installation interval from three to five days. The Commission's policy decision to continue to require a three-day installation interval was based on the input it received in this rulemaking proceeding. Maintaining a three-day installation time while decreasing applicability and reporting requirements of the rule was a reasonable balance of the Commission's Section 364.01 responsibilities of encouraging the development of competition and considering customer protection.

The Chapter 2009-226, Laws of Fla., amendments to Chapter 364, F.S., deleted references to tariffs, instead referring to rate schedules.[9] For this reason, staff recommends that the word "schedules" be substituted in place of "filed tariff" in subsection (1) of Rule 25-4.066, and that the word "schedule" be used in place of "tariff" in subsection (2) of the rule.

Rule 25-4.070 Customer Trouble Reports for Residential Service

Proposed Rule 25-4.070 (p. 22) pertains to trouble reports[10] for residential service. The rule establishes requirements for telecommunications companies when service needs to be restored, identifies circumstances under which a customer must be given a refund or adjustment, and requires reports to be filed with the Commission. The Commission proposed that Rule 25-4.070 be amended to properly characterize the service restoration requirements as "service standards" instead of "service objectives." Proposed Rule 25-4.070 contains service standards for "service interruption" and "service affecting" trouble conditions. The rule provides that the restoration of interrupted service and service affecting trouble conditions shall be scheduled to ensure clearance of at least 90 percent of these conditions within the time frames required by rule. Provisions regarding repeat trouble conditions were deleted.

As addressed previously, Joint Petitioners believe proposed Rule 25-4.070 should apply to basic residential customer service only. For the reasons previously set forth in this recommendation, staff agrees and recommends that this change be made to the title of proposed Rule 25-4.070 and to subsections (1) and (8).

Joint Petitioners also suggest that subsections (2), (3), (4) and (6) of the proposed rule be changed to provide for service objectives rather than a stricter requirement of service standards. They state that the Commission should be moving toward less regulation as competition intensifies and ILECs continue to lose lines to unregulated providers.

Staff does not believe that proposed Rule 25-4.070 should be changed to adopt Joint Petitioners' suggestions concerning service standards. Staff believes that the question before the Commission in reviewing these rules is not solely whether or not certain rule provisions are needed because competition exists in the telecommunications market, but whether a statutory responsibility of the Commission is being implemented by a particular rule, and whether the rule is necessary for the proper implementation of that statute. Rule 25-4.070 implements Section 364.15, F.S., by providing specific requirements regarding restoration of interrupted service, repairs on Sundays and holidays, and service interruptions that affect the public health and safety. Staff believes that the proposed rule is important and necessary to implement Section 364.15, F.S. Setting such requirements by rule ensures uniform enforcement of the exercise of the Commission's regulatory responsibilities under Section 364.15, F.S. Moreover, rulemaking

[9] See Chapter 2009-226, Laws of Fla.: Sections 364.051(5)(a), 364.10(3)(a), and 364.3376(2), (3)(c), (8), and (9), F.S.

[10] Rule 25-4.003 defines a "trouble report" as "[a]ny oral or written report from a subscriber or user of telephone service to the telephone company indicating improper function or defective conditions with respect to the operation of telephone facilities over which the telephone company has control."

is not a matter of agency discretion, and Section 120.54(1)(a), F.S., requires that each agency statement defined as a rule by Section 120.52, F.S.,[11] must be adopted as a rule.

Staff does not recommend that Rule 25-4.070 be changed to provide for service objectives[12] instead of service standards.[13] The service restoration requirements in subsections (2), (3), (4), and (6) are requirements which companies are expected to meet as representative of adequate service, and therefore meet the definition of a service standard. Staff believes that the requirements in these subsections are properly characterized as "service standards" instead of "service objectives," consistent with Commission practice.[14]

Joint Petitioners also urge that the service standards for trouble clearing be changed to 80 percent within 48 hours. They state the 80 percent objective would provide a safety net to assure that repair timelines stay within certain limits, but would leave more room for market forces to find service levels that customers value. Joint Petitioners request that the out-of-service and not-out-of-service standards be combined. They assert that this change to the proposed rule may enable ILECs to achieve greater efficiencies in their repair operations.

The Commission's proposed rule changed the existing rule language from 95% to 90% clearance and maintains the distinction between service interruption and service affecting standards. Staff believes that the proposed rule language strikes a reasonable balance between the Commission's Section 364.01 responsibilities of encouraging the development of competition and considering customer protection.

CWA urges the Commission to retain subparagraph (1)(c) and subsection (5) of Rule 25-4.070. Subparagraph (1)(c) provides that if service is discontinued in error, the service shall be restored without undue delay and clarification made with the subscriber to verify that service is restored and in satisfactory working condition. Subsection (5) of Rule 25-4.070 requires each telephone company to establish procedures to ensure the prompt investigation and correction of repeat trouble reports, as defined, and that the percentage of repeat troubles would not exceed 20 percent of the total initial customer reports in each exchange when measured on a monthly basis.

With regard to subparagraph (1)(c), staff believes that a customer's service that has been disconnected in error must be restored within 24 hours pursuant to the provisions of Rule 25-

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[11] Subsection 120.52(16) defines "rule" as "each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency or solicits any information not specifically required by statute or by the existing rule."

[12] Section 25-4.003(47) defines "service objective" as "[a] quality of service which is desirable to be achieved under normal conditions."

[13] Section 25-4.003(48) defines "service standard" as "[a] level of service that a telecommunications company, under normal conditions, is expected to meet in its certificated territory as representative of adequate services."

[14] See, e.g., Docket No. 991376-TL, In re: Initiation of show cause proceedings against GTE Florida Incorporated for violation of service standards (concerning, inter alia, violation of the Rule 25-4.070(3)(a), F.A.C., service standard); Docket No. 991377-TL, In re: Initiation of show cause proceedings against Sprint-Florida, Incorporated for violation of service standards (concerning, inter alia, violation of the Rule 25-4.070(1)(c) and (d) and (3)(a), F.A.C., service standards); and Docket No. 991378-TL, In re: Initiation of show cause proceedings against BellSouth Telecommunications, Inc. for violation of service standards (concerning violation of the Rule 25-4.070(1)(d) and (3)(a), F.A.C., service standards).

4.070. The term "undue delay" did not have an enforceable measure and is appropriately deleted. Additionally, it is common practice for companies to contact customers when an outage occurs to ensure that the customer is satisfied with the repairs; therefore, the rule requirement is appropriately deleted. With regard to subsection (5), repeat troubles are an expense to telephone companies that staff would expect should result in prompt investigation and correction without the necessity of a rule requirement. It is to the detriment of the company to allow a high percentage of repeat troubles to continue without prompt correction. For these reasons, staff believes that the deletion of subparagraph (1)(c) and subsection (5) from Rule 25-4.070 is appropriate, and that these provisions should not be retained as suggested by CWA.

Rule 25-4.073, Answer Time

Rule 25-4.073 pertains to a company's responsibilities in answering calls to their offices. Each company is required to submit a report pursuant to Rule 25-4.0185, F.A.C., to the Commission with respect to answer time. The Commission's proposed amendments to Rule 25-4.073 (p. 25) include clarifying that the rule applies to residential service only, increasing the times within which calls directed to business and repair offices must be answered by a company, combining repair office and business office answer time service standards, and deleting a provision requiring the utility to make answering time studies.

Joint Petitioners suggest changing the proposed rule to apply to basic local telecommunications customers only. Staff agrees and recommends changing the proposed rule to apply to basic telecommunications customers only, for the reasons previously set forth in this recommendation.

Subparagraph (1)(a) of current Rule 25-4.073 requires that each company under normal operating conditions answer at least 90 percent of all calls directed to repair services and 80 percent of all calls to business offices within 30 seconds after the last digit is dialed when no menu driven system is utilized. The Commission has proposed amending the rule to require that at least 90 percent of all calls directed to both business and repair offices for solely residential service be answered within 90 seconds after the last digit is dialed when no menu driven system is used.

Joint Petitioners recommend deleting the requirements of subparagraph (1)(a). They suggest that, instead, answer time for calls directed to repair services and calls directed to business offices for basic residential service customers, as opposed to all residential service customers, be measured and reported based on the average speed of answer (ASA) which shall not exceed 120 seconds. They suggest amending the rule to state that the measurement of ASA begins when the call leaves the automated, interactive answering system, referred to as an Integrated Voice Response Unit (IVRU), and ends when a service representative answers the call or the caller abandons the call. Further, they suggest language that provides that, where an IVRU is not used, measurement of ASA begins as soon as the call is received and ends when a service representative answers the call or the caller abandons the call. Joint Petitioners suggest language stating that, for companies that do not have systems enabling reporting results on an automated basis according to service type, performance shall be measured and reported based on results for all residential telecommunications customers. Finally, upon request, the Commission

may authorize a company to measure and report results on an alternative basis. Joint Petitioners state that aggressive answer time requirements increase costs to companies and decrease capital that could otherwise be used to deploy broadband or provide services customers value.

Staff does not recommend changing the required answer time to an ASA not to exceed 120 seconds. Staff recognizes that there is some level of competition for basic service. With regard to Rule 25-4.073 and the answer time requirements, staff does not believe that competition will force companies to answer the telephone, but that it could potentially have the opposite effect. In a competitive environment, it is more cost effective to have an automated system do as much work as possible and have fewer service representatives answer the telephones. In the proposed rule, customers may use the automated features for as long as they want to and have no effect on the answer time. Answer time as proposed in the rule is only measured from the time a person elects to receive help from a live representative. Staff believes that the amendments proposed by the Commission will allow the companies additional flexibility in managing their call centers and in regard to using automated systems. Staff also believes that 90 seconds is a reasonable amount of time for a person to wait for a live attendant when compared to answer times in other industries.[15]

Subparagraphs (1)(b) and (c) of Rule 25-4.073 currently state that, when a company uses an IVRU, at least 95 percent of the calls offered shall be answered within 15 seconds after the last digit is dialed, and the initial recorded message presented by the system to the customer shall include the option of transferring to a live attendant within the first 30 seconds of the message. The call is required to be transferred by the system to a live attendant when a subscriber selects that option or does not interact with the system for 20 seconds, and at least 90 percent of the calls shall be answered by the live attendant prepared to give immediate assistance within 55 seconds of being transferred to the attendant.

The Commission has proposed that subparagraph (1)(b) be amended to increase the answer time of the IVRU from 15 to 30 seconds in order to give companies the ability to reduce the number of trunks. The Commission also proposed changing the time within which the option to transfer to a live attendant is presented to the caller from 30 to 60 seconds from the message. The Commission proposed amending subparagraph (1)(c) of Rule 25-4.073 to delete as obsolete the portion of this rule requiring that subscribers who do not interact with the IVRU for 20 seconds be transferred to a live attendant. The Commission also proposed amending the rule to increase the answer time for live attendants from 55 to 90 seconds. Staff believes that the Commission’s proposed changes which increase the answer times should result in cost savings to the companies. Staff also believes that these increased answer times are an acceptable amount of time for both callers and companies as compared to other industries.[16]

[15] For example, 47 C.F.R. 76.309, Cable Television Service, Customer Service Obligations, does not use ASA as a basis for answer time, but requires, under normal operating conditions, answer time by a customer representative, including wait time, not to exceed 30 seconds when the connection is made.

[16] For example, 47 C.F.R. 76.309, requires, under normal operating conditions, answer time by a customer representative, including wait time, not to exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards are required to be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.

Joint Petitioners suggest deleting the language of subparagraphs (1)(b) and (c) and replacing it with the statement that the answer time for calls initially routed to an automated menu and handled without the intervention of a live business office representative should be counted as one second.

Staff does not recommend changing the proposed rule to make the changes to subparagraphs (1)(b) and (c) suggested by Joint Petitioners. The purpose of the answer time rule has always been to measure the amount of time it takes for a person to access a live person for assistance after the customer has requested a live attendant. Many customers have questions that cannot possibly be handled by an automated system. Adding in answer time for an automated system is not appropriate because it would skew the answer time results. A one second answer time call would offset many calls that far exceed the standards the Commission has set forth.

Subparagraph (1)(d) defines the term "answered" as used in subparagraphs (1)(a) and (c) to mean more than an acknowledgment that the customer is waiting on the line and that the service representative is ready to render assistance. Joint Petitioners suggest amending this language to limit this definition to calls in which the customer elects to speak to a service representative. Staff does not recommend that this suggested change should be made. Staff believes that subparagraph (1)(d) should be retained as an important customer service protection. Having someone answer the phone without having the ability to assist defeats the purpose of electing to speak with a live person. A company could have a person answer the phone only to put the person on hold, which would not serve the purpose of providing quality service.

Rule 25-4.110, Customer Billing for Local Exchange Telecommunications Companies

Rule 25-4.110 (p. 30) is a very extensive rule which contains specific and detailed requirements concerning billing. This rule implements Section 364.604, F.S., which specifically requires that each billing party must clearly identify on its bill, among other things, the telecommunications or information services billed, and the specific charges, taxes, and fees associated with each telecommunications or information service.[17] The statute also specifies that the Commission may adopt rules to implement that section. Rule 25-4.110 also implements Section 364.603, F.S., which requires the Commission to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service, and Section 364.3382, F.S., which requires LECs to make certain disclosures to residential customers.

The Commission proposed to amend the rule to state that local providers are required to meet the requirements of the FCC Truth-in-Billing Requirements for Common Carriers. The Commission proposed significant changes to the rule. The Commission proposed deleting the following provisions of Rule 25-4.110 that are duplicative of Section 364.604, F.S., or 47 C.F.R. 64.2401(a), (b) and (d): Subparagraphs (2)(a)(b), and (c), concerning billing requirements; the

[17] Prior to July 1, 2009, Rule 25-4.110 also implemented Section 364.19, F.S., which grants the Commission the authority to regulate by rule the terms of telecommunications service contracts between telecommunications companies and their patrons. However, Section 364.051(1)(c) was amended effective July 1, 2009, such that price regulated LECs are exempt from Section 364.19. All LECs operating in Florida are now price regulated. Likewise, price regulated LECs are exempt from Sections 364.03, 364.05, and 364.17, F.S., making those statutes inapplicable as implementing authority for this rule.

provision in subsection (4) requiring itemized bills to be in easily understood language; subsection (14), concerning billing information requirements; subsection (17), concerning notice of change to the customer's presubscribed provider of local, local toll, or toll service; and the language of subsection (2)(d) which states that each billing party shall set forth on the bill all charges, fees, and taxes which are due and payable. The Commission proposed deleting as obsolete subparagraph (4)(c), which requires a bill to itemize touch tone service charges; the provision in subsection (10) referencing ratemaking proceedings; and the provisions of subsection (15) of Rule 25-4.110, addressing requirements concerning charges for Pay Per Call service (900 or 976).

The Commission proposed amending subsection (4) such that the annual itemized bill shall be accompanied by a bill insert or bill message, rather than by solely a bill stuffer. Further, the Commission proposed amending subparagraph (5)(c) to allow the statement on bills of either dollar amounts or items, rather than solely items for which nonpayment will result in disconnection. The purpose of this amendment is to give the companies more flexibility in their bill presentation.

Additionally, the Commission proposed deleting unnecessary provisions of subsection (7), and all of subsection (11) of Rule 25-4.110, Local Communications Services Tax, in part as duplicative of Chapter 202, F.S., Communications Services Tax Simplification Law, which authorizes and addresses local communications services tax, and in part because certain provisions are adequately addressed through Section 364.604. The Commission also proposed deleting subsection (12), State Communications Services Tax, as unnecessarily duplicative of definitions found in the Chapters 202 and 203, F.S., and, in part, as adequately addressed by Section 364.604.

Joint Petitioners state that Rule 25-4.110 is "unnecessary in Florida because the telecommunications market is competitive." They request that the Commission change subsection (1) of the proposed rule to reference the FCC's Truth-In-Billing requirements and strike the remaining subsections (2) through (16) of the proposed rule. They assert that "[t]he FCC's Truth-In-Billing requirements provide customers the tools needed to make informed choices in the market and provide carriers with specific requirements as to information provided to customers on their bills."

Joint Petitioners state that subsections (3), (4) and (5) do not apply to competitive local exchange telecommunications companies (CLECs) or the ILECs' other competitors. Moreover, they assert that subsections (3) and (4) are unnecessary because they are adequately covered by Section 364.3382, F.S.

Joint Petitioners state that subsection (6) is unnecessary because it is duplicative of the requirement in subparagraph (1)(b) of Rule 25-4.070, F.A.C. As for subsection (10) of the proposed rule concerning backbilling mistakes, Joint Petitioners state that CLECs are not subject to such a requirement and instead are governed by the applicable statute of limitations, and the same should be true for the ILECs.[18]

[18] Joint Petitioners did not allege what statute of limitations would apply to backbilling mistakes.

Joint Petitioners assert that the requirements of proposed Rule 25-4.110(12) relating to 900/976 rules addressing 900/976 notice of blocking provisions to the customer and regarding adjusting the bill containing Pay Per Call charges when the customer states that he/she had no knowledge that such calls have a charge, are not applied to the ILECs' competitors and are "unnecessary in today's environment." Moreover, they state that the FCC's rules and Section 364.604, F.S., require carriers to clearly identify all charges on the bill and to provide specific notice about how to contest charges. They assert that, if a dispute arises, the appropriate method to resolve it would be a complaint proceeding before the Commission.

Staff does not believe that the Commission should adopt Joint Petitioners' suggested changes to the proposed rule. While staff believes that the FCC Truth-in-Billing regulations and state statutes allow deletion of the rule provisions as proposed by the Commission in amending Rule 25-4.110, the provisions included in the proposed rule should be retained because they are not duplicative of the law, and are not obsolete or unnecessary. Subsections (1) through (15) of proposed Rule 25-4.110, address an option for monthly billing, an annual itemized bill with explanation, bill credits for out-of-service conditions, minimum time for bill payment, annual notice regarding directory closing date and listing updates/additions, annual notice regarding "no sales solicitation" list, a 12-month limit on backbilling, application of partial payments, removal of unauthorized charges, notification of PC Freeze availability, and requests from customers for a billing party to restrict charges in its bills. These provisions of Rule 25-4.110 provide important consumer safeguards and information to customers. Staff believes that these requirements in proposed Rule 25-4.110 are necessary and important to the Commission's implementation of Section 364.604, F.S.

Staff does not believe that the Commission should adopt Joint Petitioners' suggestion to delete provisions for which the Commission proposed amendments. Staff recommends that no change be made to the proposed subsection (2), which adds language stating that the billing party will provide a plain language explanation to any customer who contacts the billing party, and which replaces similar language proposed for deletion in subparagraph (2)(d)2.b. of the rule. Staff believes that this is an important customer protection which should be maintained.

Subsection (3)(a) of Rule 25-4.110 requires that each LEC shall provide an itemized bill for local service with the first bill rendered after local exchange service to a customer is initiated or changed. Staff does not agree with Joint Petitioners that subsection (3) is adequately covered by Section 364.3382, and therefore should be deleted as unnecessary. This requirement is not specifically states in the statute, and staff believes that it is an important customer protection.

Proposed rule subsection (4) contains provisions which implement Section 364.3382, F.S., and which are not specifically stated in the statute. Section 364.3382, Disclosure, essentially requires a new residential customer to be advised of the least-cost service alternative, and provide a listing of what information an itemized bill shall include and the option of using a bill message instead of a bill insert. This section was amended, effective July 1, 2009, to delete the requirement that the disclosure be in the form of a bill insert, and to delete the requirement that copies of both the written notices and information provided to customer service representatives concerning this disclosure be submitted to the Commission for prior approval.

Staff does not agree with Joint Petitioners that subsection (4) is adequately covered by Section 364.3382, and therefore should be deleted as unnecessary. However, Staff recommends that proposed Rule 25-4.110(4) be amended, consistent with the statutory amendments, to delete the language that: "This bill insert or bill message shall be submitted to the Commission's Division of Regulatory Compliance." (p. 32)

Likewise, staff recommends that subsection (5) be retained in its current form as proposed by the Commission. (p.33) Subsection (5) lists items which are required to be on all bills rendered by a LEC: Discount or penalty, past due balance, items for which nonpayment will result in disconnection of basic local service, long-distance monthly or minimum charges and usage charges, usage–based local charges, telecommunications access system surcharge, 911 fee, and delinquent date. Staff believes that this information is important for customers and that this subsection should, therefore, be retained.

Staff recommends that the Commission should not adopt Joint Petitioners' suggestion to delete Subsection (5)(c) which requires a LEC or IXC to adjust the first bill containing Pay Per Call charges upon the customer's stated lack of knowledge that such calls have a charge, and to make a second adjustment if necessary as described in the rule. Further, staff does not recommend adopting Joint Petitioners' suggestion to delete the language of this provision which requires that at the time the charge is removed, the end user/customer must be notified of the availability of free blocking of Pay Per Call service. Staff believes that these provisions are required in order to provide customers with protection. Staff notes that Section 364.604(3) provides additional protection to customers by requiring that every billing party provide a free blocking option to a customer to block 900 or 976 telephone calls.

Staff also recommends that subsection (6) of the Rule 25-4.110 be retained in its current form as proposed by the Commission. Staff does not agree with Joint Petitioners that this subsection is duplicative of the requirement in Rule 25-4.070(1)(b), F.A.C. Subsection (6) requires each company to make appropriate adjustments or refunds where the subscriber's service is interrupted through no fault of the subscriber, and remains out of order in excess of 48 hours after the subscriber notifies the company of the interruption. Rule 25-4.070(1)(b) does not address how a refund or adjustment is to be calculated.

Staff does not recommend that subsection (10) be deleted as suggested by Joint Petitioners. Proposed subsection (10) requires that the company may not backbill in excess of 12 months where any undercharge in billing of a customer is the result of a company mistake. Staff recommends retaining that portion of subsection (10) as proposed by the Commission because it provides certainty to the company and the customer. (p. 35)

In addition, staff recommends that the Commission should not adopt Joint Petitioners' suggested deletion of proposed subsection (13). Proposed subsection (13) specifies that customers must be notified that a PC-Freeze is available "at no charge" and requires that notification shall conform to the requirements of Rule 25-4.083. (p. 40) Staff believes that the proposed amendments to subsection (13) of Rule 25-4.110 are required by Section 364.603, F.S., which states the Commission must adopt rules which "provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge."

Issue 2: Should the Commission adopt changes to proposed Rule 25-4.083, Florida Administrative Code, as suggested by the FCTA?

Recommendation: No, the Commission should not adopt FCTA's suggested changes to proposed Rule 25-4.083, F.A.C. (Cowdery, Miller, Salak, Mailhot, Kennedy)

Staff Analysis: Rule 25-4.083 imposes requirements on local exchange providers concerning imposition and removal of a Preferred Carrier Freeze (PC-Freeze)[19] on a subscriber's account, including information which must be contained on written authorizations to impose a PC-Freeze on a preferred provider selection. Rule 25-4.083 implements Section 364.603, F.S., Methodology for Changing Telecommunications Provider, which requires the Commission to adopt rules to prevent the unauthorized change of a subscriber's telecommunications service, to provide for specific verification methodologies, to provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge, to allow for a subscriber's change to be considered valid if verification was performed consistent with the Commission's rules, to provide for remedies for violations of the rules, and to allow for the imposition of other penalties available in Chapter 364, F.S.

The Commission proposed to amend Rule 25-4.083 by requiring local providers to meet the requirements of 47 C.F.R., 64.1190 concerning PC-Freezes. (p. 30) Further, the Commission proposed to delete the rule requirements of Rule 25-4.083 which were duplicative of the provisions of 47 C.F.R 64.1190. In addition to the 47 C.F.R. 64.1190 requirements, the proposed rule contains three subsections.

The Commission proposed to amend Rule 25-4.083 to add a new subsection (1) to state that a local provider shall make available a PC-Freeze upon a subscriber's request. (p. 27) In addition, the Commission proposed retaining the rule requirements that a PC-Freeze shall not be required as a condition for obtaining service and that a PC-Freeze shall be implemented or removed at no charge to the subscriber. The Commission proposed deleting the remaining subsections of Rule 25-4.083.

The Commission proposed that subsection (5) of Rule 25-4.083 should be deleted. This subsection prohibits a local provider from soliciting, marketing, or inducing subscribers to request a PC-Freeze, but states that a local provider is not prohibited from informing an existing or potential new subscriber who expresses concerns about slamming about the availability of a PC-Freeze.

The Commission proposed that Rule 25-4.083 be amended to delete subsections (3), (6), and (8), as covered by the requirements of the 47 C.F.R. 64.1190(c), (d)(2), and (e), respectively. Subparagraphs (4)(a) and (b) of Rule 25-4.083 were deleted because they are covered by the requirements of 47 C.F.R 64.1190(d)(1). Likewise, subparagraphs (7)(a) through (c) of Rule 25-4.083 were deleted because they are covered by the requirements of 47 C.F.R 64.1190(d)(3).

[19] A PC-Freeze is defined in Rule 25-4.003(43) as "[a] service offered that restricts the customer's carrier selection until further notice from the customer."

The Commission proposed that subsection (9) of Rule 25-4.083 be deleted because it is unnecessary. This subsection requires a local provider to retain authorization documentation or recordings for a period of one year as proof that a customer requested implementing or lifting a PC-Freeze.

In its comments, FCTA suggests that the Commission essentially withdraw its proposal to amend Rule 25-4.083 and keep the rule as it exists today, with the exception of subsection (9), the one-year record retention requirement, which it believes may be deleted. FCTA states that Rule 25-4.083 protects consumers by ensuring that no "slamming" of a customer, i.e., the unauthorized switch of a customer's carrier, can occur. It asserts that the rule also safeguards competition and ensures a level playing field because the rule prevents a carrier from imposing a PC-Freeze on a customer without that customer's consent. FCTA states that, were it otherwise, carriers could unilaterally prevent any customer from switching to a competitor by imposing a PC-Freeze without the subscriber's consent, thereby "stopping competition in its tracks." It contends that Florida's existing rule represents "a thoughtful and measured effort." FCTA asserts that the amendments the Commission is proposing to Rule 25-4.083 lack evidentiary support in the record.

Specifically, FCTA disagrees with adding proposed subsection (1) to Rule 25-4.083. FCTA states that there has been no showing in this docket that the information required by proposed subsection (1) would be beneficial to consumers. FCTA asserts that introducing a new requirement in the rule that LECs provide notice to their customers of the PC-Freeze option could hamper competition.

Staff does not agree with FCTA's characterization of proposed subsection (1). Proposed subsection (1) is not a notification provision, but is a requirement that the companies make available a PC-Freeze upon a subscriber's request. This subsection was added because it is not specifically required by 47 C.F.R. Section 64.1190. 47 C.F.R. 64.1190 applies only to LECs who offer PC-Freezes.[20] Thus, if a LEC elects not to offer this service, customers would not be able to obtain a PC-Freeze to protect themselves from an unauthorized carrier change. In contrast, Section 364.603, F.S., requires telecommunications companies to offer PC-Freezes, and Rule 25-4.083, F.A.C., applies to ILECs, CLECs, and intrastate interexchange companies (IXCs).

FCTA disagrees that the offer of a PC-Freeze is mandatory. It states that Section 364.603, F.S., requires consistency with federal law, yet the federal regulations suggest that offering PC-Freezes is optional. FCTA states that it is concerned that under the proposed rule ILECs could aggressively solicit existing customers to freeze their choice of carrier, making it more difficult to transfer a customer seamlessly to a new network. FCTA states that the PC-Freeze makes it harder for a competitor to win a customer because it creates numerous additional steps to "unfreeze" the carrier choice.

Staff believes that, in order to implement Section 364.603, F.S., the offer of a PC-Freeze must be a mandate. The law requires the Commission to adopt rules to prevent slamming and

[20] 47 C.F.R. 64.1190(a)

take other actions, such as requiring the companies to notify subscribers of the ability to freeze the subscriber's choice of carriers.

FCTA also disagrees with deletion of subsection (5) of the existing rule, which prohibits ILECs from soliciting their subscribers to place PC-Freezes on their accounts. FCTA states that this provision is designed to ensure a level playing field between incumbent and competitor. It asserts that the presence of this rule requirement has helped facilitate competition in Florida. FCTA states that removing the "no solicitation" rule would enable ILECs to create a new hurdle for competitors to clear when seeking to win customers. Allowing a solicitation of a PC-Freeze would enable a competitor to freeze customers in place, thereby erecting a barrier to competition. Thus, FCTA urges the Commission to withdraw the changes it has proposed to this section of the rule.

Staff does not recommend that proposed Rule 25-4.083 be changed to prohibit ILECs' soliciting their subscribers to place PC-Freezes on customer accounts. Staff believes that subsection (5) is appropriately deleted because there will be sufficient consumer protections remaining in proposed Rule 25-4.083, proposed Rule 25-4.110(13), and 47 C.F.R. 64.1190 to prevent companies from misleading customers about PC-Freezes. Section 64.1190 provides that all carrier-provided solicitation must include an explanation, in clear and neutral language, of what a PC-Freeze is and what services may be subject to a freeze. Proposed Rule 25-4.110(13), requires that companies billing for local service must provide notification to customers about the availability of a PC-Freeze at no charge. Proposed subsection 25-4.083(2) prevents a company from forcing a customer to take a PC-Freeze as a condition for obtaining service. If there are abusive or anticompetitive practices that are alleged, the Commission is required by Section 364.603, F.S., to resolve on an expedited basis any complaints of anticompetitive behavior concerning a local PC-Freeze.

FCTA initially took the position in this docket that the Commission should retain subsection (9) of the rule which requires authorization confirmation to be retained for one year to show that a customer requested the implementation or lifting of a PC-Freeze. However, in its supplemental comments, FCTA states that the one year record retention requirement is no longer necessary due to the Chapter 2009-226, Laws of Fla., amendments to Section 364.603, F.S., which place the burden of proving that a customer requested a PC-Freeze on the provider asserting that the PC-Freeze exists. FCTA states that existing federal rules and the statutory amendments create an incentive for providers to retain information showing a customer actually requested a PC-Freeze, because if the provider does not retain evidence of a customer request, any complaint concerning whether a customer actually requested the freeze will likely be resolved against the provider. FCTA states that the incentives for ILECs to retain these records enables the Commission to resolve disputes quickly and in a way that benefits the customer and fairness in the marketplace.

Consistent with FCTA's position in support of the proposed deletion of subsection (9), staff continues to recommend that the rule retention requirement be deleted as proposed. Staff also notes that Section 364.603 has been amended to require the Commission to resolve on an expedited basis any complaints of anticompetitive behavior concerning a local PC-Freeze. As pointed out by FCTA, the amended statute provides that the telecommunications company that is

asserting the existence of a local PC-Freeze shall have the burden of proving through competent evidence that the customer did in fact request the freeze. If the company does not retain authorization confirmation records, it may have a difficult time meeting this burden of proof.

FCTA also suggests that subsections (10), (11) and (12) of Rule 25-4.083 be retained. FCTA states that these subsections contain provisions designed to ensure that back office procedures account for PC-Freezes when an underlying wholesale service provider changes. FCTA specifically points to subsection (11) of Rule 25-4.083 as a means to increase communications between providers and states that deleting this subsection could have a harmful effect on those interactions.

Staff believes that these back office procedures are generally better left as “best practices” of the industry. Furthermore, these subsections were originally adopted in 2004 at the request of several telecommunications companies.[21] Because the industry requested elimination of these provisions in this rulemaking, staff concluded that the industry has changed its operational practices such that the issues addressed by these rules no longer exist as impairments to the competitive market.

FCTA states that ILECs still possess the power unilaterally to delay or prevent customers from switching to a competitor. FCTA states that for these reasons the Commission should keep Rule 25-4.083 as it is in effect today.

While staff agrees that Rule 25-4.083 has been an effective and well-balanced rule, we recommend the streamlining of the rule as proposed by the Commission and as set forth in this recommendation. Streamlining should retain the key ingredients of the rule, while minimizing the burden on the companies.

[21] Docket No. 040167-TP, In Re: Proposed adoption of Rules 25-4.082, F.A.C., Number Portability, and 25-4.083, F.A.C., Preferred Carrier Freeze; and proposed amendment of Rules 25-4.003, F.A.C., Definitions; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations; Rules Incorporated.

Issue 3: Should this docket be closed?

Recommendation: Yes. (Cowdery, Miller)

Staff Analysis: If the Commission votes to accept staff's recommendation in Issues 1, a notice of change must be issued prior to the filing of the rules with the Secretary of State. If, however, the Commission votes not to change the proposed rules addressed in Issue 1, the rules will be filed with the Secretary of State for adoption without changes. If the Commission votes to accept staff's recommendation in Issue 2, proposed Rule 25-4.083 will be filed with the Secretary of State for adoption without changes. In either instance, the docket should be closed once the rules are filed with the Secretary of State.