

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110224-TP

PROPOSED AMENDMENT OF  
RULE 25-4.0161, F.A.C.,  
REGULATORY ASSESSMENT  
FEES; TELECOMMUNICATIONS  
COMPANIES.

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PROCEEDINGS: STAFF WORKSHOP  
  
TAKEN AT THE  
INSTANCE OF: The Staff of the Florida  
Public Service Commission

DATE: Monday, August 22, 2011

TIME: Commenced at 9:30 a.m.  
Concluded at 10:06 a.m.

PLACE: Betty Easley Conference Center  
Hearing Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

## P R O C E E D I N G S

1  
2           **MS. COWDERY:** Good morning. Pursuant to  
3 notice, this time and place have been set for a staff  
4 development rule workshop in Docket Number 110224-TP, to  
5 take input from interested persons on amendments to Rule  
6 25-4.0161, Florida Administrative Code, entitled  
7 Regulatory Assessment Fees; Telecommunication Companies.

8           My name is Kathryn Cowdery; I'm an attorney  
9 with the Florida Public Service Commission. Also here  
10 on behalf of staff are Ray Kennedy, Beth Salak, Dale  
11 Mailhot, and Bill McNulty. There are sign-in sheets at  
12 the back of the room, and we ask that everyone sign in  
13 so that we have a record of who's in attendance today.  
14 There are also copies of the workshop materials. The  
15 workshop materials that were previously sent to the  
16 industry are the exact same as what is in the back of  
17 the room and what is on-line. There have been no  
18 changes. For the benefit of others, including the court  
19 reporter, please identify yourself when you are  
20 speaking. Do we have any other preliminary matters?

21           Okay. First on the agenda, to explain draft  
22 rule amendments and solicit comments or questions, is  
23 Mr. Ray Kennedy.

24           **MR. KENNEDY:** Good morning. The little Xs in  
25 the draft rule, I will not be talking about those. I'll

1 talk about everything else except the little Xs, and  
2 that will be passed along to Dale Mailhot. So I have  
3 the easy part, hopefully.

4 What we did here is just to go over a little,  
5 I guess, conceptualize somewhat while looking for  
6 statutory changes, it basically left the certification  
7 for companies that appear to be local type service  
8 providers and pay telephone companies. Of course, the  
9 IXCs are all gone, so within this draft rule you will  
10 see that is all taken out. From that concept is how we  
11 proceeded with this rulemaking. And we had companies  
12 who paid -- for the first half of 2011, they paid the  
13 .0020 percentage for the first six months of the year.  
14 And, of course, we are going to have a new number, I  
15 suppose, for the last six months of the year.

16 So we used a concept of a melded rate for  
17 those companies who will pay for the entire year, which  
18 are those who paid less than \$10,000 a year. And those  
19 who paid more than \$10,000 the second half of the year,  
20 they would pay the new lower rate, assuming that to be  
21 the case. So that's basically how we started out with  
22 this rule.

23 I'm going to just go to Page 5 in the document  
24 that you should have, that's where the start of the rule  
25 is. And in the first paragraph we basically just, you

1 know, define the concept as I just described in (1).

2 Anybody have any suggestions or changes on  
3 that at all? Hearing nothing, on (2), I basically took  
4 the same -- the same paragraph exists later on, except  
5 we are qualifying this to cover the year 2011. And  
6 that's where we are going to have two different RAF  
7 rates, the melded rate and the new rate. So that's  
8 covered there, and it explains what applies to what.  
9 And hopefully that is clear with the \$10,000 versus the  
10 less than \$10,000 payers.

11 Now, within there on Line 12, we make  
12 reference -- and I did not look at this when I drafted  
13 this up, but we make reference to Statute 364.02(12).  
14 And for the life of us, none of us can come up with any  
15 reason why we should have that there. So today we are  
16 recommending taking that reference out. So Line 12,  
17 364.02(12), remove that. Any questions on Paragraph 2?  
18 Okay.

19 On Page 6, as you can see starting in Line 10,  
20 we changed everything to local telephone service  
21 provider and pay telephone service provider. We kept  
22 the minimums that existed for CLEC AAV. The minimum  
23 retained in the same number, because we won't know what  
24 we should have as a new minimum. Next year that will be  
25 looked at again, and it may be adjusted upward or

1 downward, depending on the experience -- and all the  
2 costs and experience we have. So for this interim time  
3 frame, we're leaving it at \$600. And statutorily it can  
4 be as high as 1,000. Payphones, we did not change. We  
5 left that at \$100 minimum.

6 Paragraph 3, beginning on Line 16, basically  
7 no changes to that, just a new paragraph number.

8 Paragraph 4 on Line 25, no changes to that.

9 New Paragraph 5, the Commission forms. We  
10 have four forms drafted attached. We needed one for the  
11 interim year, and then we needed the ones going forward  
12 from that. Plus, the one for the LECs; all the local  
13 type companies for the last half of the year will be the  
14 ones that the LECs and all who paid more than the  
15 \$10,000 would utilize. And once we get the percentages  
16 in there, this should be very clear. So we just changed  
17 the forms to fit the scenario at hand. And eventually  
18 two of them will go away. And they are labeled interim  
19 as you will see when we get to the back of the package.  
20 And we eliminated everything else.

21 We also added was on Line 21, the failure of a  
22 telecommunications company to receive a return shall not  
23 excuse them from paying. We have added that. That is  
24 going to be in all the RAF rules for all industries. At  
25 the same time we did a little housekeeping within this

1 rulemaking to have consistency in the RAF processes  
2 between the industries. Any questions so far?

3 Okay. New Paragraph Number 6, no changes.

4 All that changed in the new Paragraph 7 was  
5 the new paragraph reference numbers, because we added a  
6 paragraph.

7 Paragraph 8, just some house cleaning. And we  
8 have modified the form to ask for an extension. And  
9 primarily that was driven, if I recall, we had an audit,  
10 external auditor who require us to provide on that form  
11 the types of reasons the companies can use to request an  
12 extension. So that is what that is primarily about.  
13 And you will see those when we get to the back end of  
14 the rulemaking. So it's just basically cleaning that  
15 up, housekeeping, and moving some things around in the  
16 paragraphs. Nothing really there of substance, in my  
17 opinion.

18 Okay. The next page, Page 9. New Paragraph  
19 9, no changes.

20 New Paragraph 10. The only changes is making  
21 the references to the new paragraph numbers correct.  
22 Also, on Line 16, we have added, instead of 15 days for  
23 a company that fails to pay, and they get the delinquent  
24 notice, we have upped that to 20. And the reason for  
25 that is the experience has shown that we are receiving a

1 lot of them on day 16 and 17, and 99.5 percent fell  
2 below 20. So we got a little soft, I guess, is the way  
3 to describe that. It would keep people from -- it saves  
4 us money and the companies money, frankly. It truly  
5 costs money to try to collect this RAF, sometimes more  
6 than we collect.

7 All references in Paragraph 11 to IXCs  
8 registration were removed.

9 The next page, Page 10, new Paragraph 12. All  
10 references were deleted to tariffs, registrations, CPCNs  
11 what have you, to correspond with the new statutory  
12 language. Certificate of authority. Same as in  
13 Paragraph 14.

14 Okay. On to the forms. The first form, Page  
15 11, that's what -- that's going to be the form that will  
16 be the new RAF form that will be used by the  
17 second-half-of-the-year companies that pay RAF that  
18 exceeded 10,000 for the entire year. All companies will  
19 use that that pay more than 10,000. And notice it is  
20 totally different from what the old blank form was with  
21 all the -- my goodness, it must have had 50 or 60 lines  
22 of data requests. We have simplified it. And the way I  
23 understand it, all of your numbers fit into one or the  
24 other of these categories. So if you have a problem  
25 with that part, you will need to respond back to us with

1 what type of problems you may have. I got this from the  
2 expert, Dale Mailhot, so he might have a few words on  
3 that.

4 **MR. MAILHOT:** Yes. The form is set up to  
5 follow the Uniform Systems of Accounts, so any of the  
6 companies that currently or continue to use the Uniform  
7 System shouldn't have any problem filling this out. On  
8 your prior form, each one of these lines was really just  
9 a subtotal, so you are just reporting in exactly the  
10 same groupings, just less detail. So it saves you  
11 probably a little bit of time filling out the form.

12 **MR. KENNEDY:** We made some changes, if you  
13 look at the next page, it's hard to pick out some of  
14 these changes because of the underlines that were  
15 already on the form. There's really nothing of  
16 substance changed on the second page of that, if you  
17 look at it. As a matter of fact, I think most of those  
18 underlines had already existed. I'm not sure. We have  
19 the XXXs, what I called earlier the little Xs have not  
20 been identified. So that you will see.

21 And since this is a new form -- this is a new  
22 form, so I didn't really have to go to underlining, I'm  
23 sorry. I confused myself there.

24 Page 13 is the interim form, and the changes  
25 we made on this interim form -- actually one of the most

1 significant changes, it affects the smaller companies,  
2 is if you will notice on Line 8, the RAF fee, assessment  
3 fee due, we used to have that, and this is a new form,  
4 as well, it has a new number. And you will see later on  
5 we moved that \$600 from down on Line 12 up to Line 8  
6 because it confused people. They have been after me for  
7 a long time to fix that, so we are fixing that now. So  
8 this is a new form. The same as the other form, it will  
9 just has a different percentage on it for the RAF. The  
10 Xs will be different.

11 Page 15. This is the pay telephone RAF form  
12 which will be used. This is a revised form. We used  
13 the old form and just made changes to it, strike  
14 throughs, underlines. It will have a new percentage,  
15 plus we moved the \$100 up from Line 9 to Line 5 because  
16 of elimination of confusion.

17 And on Page 16, the back side of that form, we  
18 changed -- you notice some underlines there. Just some  
19 word changes, basically. Not a heck of a lot of impact.  
20 The good cause shown for extension on Item Number 4, and  
21 a good cause you will see shortly. We will get to it.  
22 It's actually associated with the extension request  
23 form.

24 Page 17 is the interim form which will have  
25 the melded rate once that has been determined. For

1 those who pay less than \$10,000, it will be reporting  
2 for the entire calendar year, and the same changes  
3 otherwise made on that.

4 On Page 19, the main change was to address an  
5 external audit. I don't remember which agency did it,  
6 but they thought it was very important that we define  
7 the criteria of how we will approve a request and for  
8 what reasons. And those now will be on the back of the  
9 form. They are included on Page 20. And there could be  
10 some other reasons people might propose that we might  
11 consider, but we had to define that better as requested  
12 by the auditor. And that's all I have.

13 Any questions on any of this? Thank you.

14 **MR. MAILHOT:** Okay. I have a handout to cover  
15 the calculation of our proposed RAF rate. Ray is  
16 passing this out right now. The methodology that we  
17 used to calculate the proposed RAF rate is virtually  
18 identical to what was used the last two times the RAF  
19 rate was reset for telecommunications companies.

20 We have used the upcoming fiscal year, a  
21 projection of expenses and revenues for that period of  
22 time, and we very simply backed into a RAF rate from  
23 that. On the handout you have, the first column is the  
24 calculation and how it was set the last time. We set  
25 it -- in 2004, we set it for 2005 and 2006. In the

1 current proceeding, we are setting it for 2012 and 2013  
2 as our first full fiscal year. We are also looking at  
3 the current fiscal year to see how the rate compares  
4 there. And really, there's practically no difference.  
5 Our expenses are lower by the time we get down to  
6 2012/'13, and so that's why we have kind of used that as  
7 our first fiscal year.

8 The rate, you know, according to statute and  
9 according to our rule will be retroactive to July 1st of  
10 2011. What you can see -- I'm sure all of you are aware  
11 of it, is that revenues have declined significantly  
12 without any change in the RAF rate. Even at the current  
13 RAF rate, the revenues from the last time we set the  
14 rate at .2 percent, the revenues are projected to be  
15 down to 5.9 million, which is approximately a 50 percent  
16 decrease in the RAF rate. And this was done before we  
17 got the RAF that was just paid at the end of July.  
18 These calculations were done prior to that, and the RAF  
19 is coming in even slightly below what we had projected  
20 for the current fiscal year. So, you know, if anything,  
21 this projection for 2012/'13 may be a little high in  
22 terms of revenues.

23 What we did -- okay. We backed into a RAF  
24 rate of .16 percent, which would generate \$4,740,000.  
25 And the way that's calculated very simply is it is based

1 on a projection of expenses related to  
2 telecommunications, both direct and indirect. I mean,  
3 that includes all expenses. And then we have a service  
4 charge, which is now 8 percent, which trust funds are  
5 required to pay to the state. That results in \$379,000  
6 that goes directly to the state.

7 And we are also required to keep a reserve of  
8 5 percent of our revenues, and that's \$237,000 in this  
9 case, you know, based on a projection -- based on  
10 revenue of 4,740,000. That leads to a reserve of  
11 \$237,000. And by the time you calculate all of this, it  
12 indicates there might be a surplus. It really depends  
13 if the revenues come in this high or not, but we're  
14 proposing a RAF rate of .16 percent.

15 The RAF rate for the current fiscal year --  
16 well, for the current calendar year for those companies  
17 that are -- for the larger companies that pay every six  
18 months, they would pay .16 percent beginning July 1st of  
19 this year. For the companies that pay once a year,  
20 we're looking at using a blended rate of the .2 and the  
21 .16, so that if you file on a calendar-year basis for  
22 2011, you would have a rate of .18 percent.

23 There's not too many companies that  
24 actually -- that that would actually impact, because we  
25 have a number of companies that pay twice a year, and

1 then quite a number of companies that pay the minimum.  
2 So either way, they are going to be covered under one of  
3 those. We are not going to -- to be honest, we're just  
4 not going to have that many companies that are paying  
5 .18 percent for the year. So any error that might occur  
6 from just using one rate for the whole year is pretty  
7 minimal.

8 And we just thought this was the simplest way  
9 to implement this without having three or four sets of  
10 RAF returns at the end of year, and without putting any  
11 extra burden on the companies, you know, to figure out,  
12 well, how much revenue did you have in the first half of  
13 the year versus the second half of the year.

14 Anyway, that's it. If there's any specific  
15 questions, I would be glad to answer them.

16 **MR. MOYLE:** Just out of curiosity, what were  
17 your '10/'11 expenses?

18 **MR. MAILHOT:** What was the number?

19 **MR. MOYLE:** Yes.

20 **MR. MAILHOT:** Oh. It would be the same .16.

21 **MR. MOYLE:** Right. But, if I understand this,  
22 your projected expenses for '12 and '13 are 3.8 million,  
23 is that right?

24 **MR. MAILHOT:** Right. The projected expenses  
25 for '11/'12 were something a little over \$4 million.

1           **MR. MOYLE:** So this number -- I guess your  
2 projection then anticipates lower expenses in the  
3 upcoming year? I was just trying to understand what you  
4 just went through, what that number was. You've  
5 answered the question, I guess. There's a decrease in  
6 expenses in your projected year as compared to the year  
7 that just ended, correct?

8           **MR. MAILHOT:** Yes. Actually, every year since  
9 2005/2006, telecommunications has had a decrease in  
10 expenses. The practical side is we have had to do that  
11 because every year revenues have gone down. So we've  
12 been working at cut expenses for basically the last five  
13 to six years at least. So, I mean, it's not like  
14 there's a precipitous drop suddenly in our expenses. I  
15 mean, it's been going on every year.

16           **MS. MASTERTON:** This is Susan Masterton with  
17 CenturyLink. That was the question I had. There's  
18 nothing here to show how you came to the numbers for  
19 2012 and 2013 compared to the numbers prior to the  
20 legislation. And to really see how this is working, you  
21 really need to have that information. So, you know,  
22 what were the expenses prior to the bill, and what are  
23 they projected after when a lot of the functions were  
24 taken away? I guess that's the one piece that's missing  
25 from this.

1           **MR. MAILHOT:** I'm not sure that I have those  
2 with me. I don't think I have the --

3           **MS. MASTERTON:** I mean, from my company's  
4 perspective, because that's the way I read the law, was  
5 that y'all were supposed to look at what you did and  
6 look at what you now have to do, and, you know, assess  
7 the reductions of workload in staff. And I don't see  
8 anything here that shows that analysis. And for us to  
9 really be able to assess whether we think this reflects  
10 the legislation -- obviously, we don't know, you know,  
11 what you still think you need or even what you had  
12 before, so we can't ourselves come up with that  
13 analysis, but I think we need more information from  
14 y'all to assess the analysis that you have performed.

15           **MR. MAILHOT:** Okay.

16           **MS. MASTERTON:** So is that something that we  
17 can get?

18           **MR. MAILHOT:** I assume so. I just don't have  
19 it with me, that's all I'm trying to say. I don't have  
20 another spreadsheet that has that.

21           **MS. MASTERTON:** I mean, that's just my  
22 question. To me that's what we need, and I don't know  
23 the manner of having access to that would be, but that's  
24 what we would need to really see if we think, you know,  
25 the number here reflects what's in the legislation.

1                   **MR. MAILHOT:** Right.

2                   **MS. SALAK:** If I understand Mr. Mailhot's  
3 methodology, I think it should reflect the positions  
4 that we eliminated, and it should reflect the functions.  
5 We eliminated positions, and we also have people that  
6 were no longer -- if they did a mix of industries, they  
7 will no longer do telecommunications, but continue to do  
8 more in the other industries. So it should reflect both  
9 of those, the way the numbers -- if you use some of the  
10 numbers that I believe he's using.

11                   **MS. MASTERTON:** Okay. I mean, I would just  
12 like to see some of the --

13                   **MS. SALAK:** No, I understand. And I believe  
14 the last time when we did the RAF rule change that you  
15 asked to see the same data, so I believe we can provide  
16 that.

17                   **MS. MASTERTON:** Okay. Thanks.

18                   **MR. MAILHOT:** Are there any other specific  
19 questions or comments?

20                   **MS. COWDERY:** No other questions or comments?

21                   Okay. If anyone did bring any written  
22 comments to this workshop, please bring me a copy, and I  
23 will distribute it to staff.

24                   In order to meet the statutory time frame that  
25 we have under 364.336, the draft rule amendments are

1 currently scheduled to be heard at the October 4th  
2 Agenda Conference. Because of this relative short time  
3 frame, we are asking for post-workshop comments to be  
4 submitted to us by next Monday, August 29th, in order to  
5 allow staff sufficient time to consider them. If you  
6 wish to submit written post-workshop comments on the  
7 actual draft rule language, please provide that in  
8 type-and-strike. We also invite you to give input into  
9 our preparation of the statement of estimated regulatory  
10 cost, and Bill McNulty has some comments on that.

11 **MR. McNULTY:** Yes. To be a little more  
12 specific as to the statement of estimated regulatory  
13 cost, as you know, Section 120.541 is the relevant  
14 section to look at, statement of estimated regulatory  
15 cost. And, in particular, if you look at Subsection  
16 2(b) and (e), there is an opportunity there for us to be  
17 able to complete our analysis via input from the  
18 industry.

19 And so what we would really encourage you to  
20 do would be to submit comments in two different areas.  
21 One is under that Paragraph (b), it would be to provide  
22 a statement as to which customer group served by your  
23 company or companies are expected to be affected by the  
24 rule change and how they are expected to be affected.  
25 And that is for Subparagraph (b). And then under

1 Subparagraph (e), which is the paragraph that deals with  
2 small businesses, and small cities, and small counties,  
3 if you could estimate the dollar impact of the proposed  
4 rule change on small business customers or your company  
5 in the aggregate. And also then another number for the  
6 impact for small counties and small cities, what that  
7 number would be in the aggregate. And if you happen to  
8 know how many customers fit into that category of small  
9 business and small city and small county, that would be  
10 great.

11 Obviously, you may not have that data readily  
12 available, but a best estimate would be fine. Again, we  
13 are just encouraging that. As you know, the definitions  
14 of small business are in Section 288.703, and the  
15 definition for small city/small county is in  
16 Section 120.52. If anybody needs it, I have a copy of  
17 Section 120.541. You can read that. You can access it  
18 yourself on-line.

19 Any questions?

20 **MR. MOYLE:** Just so I'm clear, has someone  
21 asked for a SERC, or y'all are just preparing one  
22 anyway?

23 **MR. McNULTY:** I believe we are supposed to  
24 provide a statement of estimated regulatory cost for all  
25 rules.

1           **MR. MOYLE:** Okay.

2           **MS. COWDERY:** Are there any other matters or  
3 questions?

4           **MS. MASTERTON:** I just hate to belabor this,  
5 but with the comments due in a week, how can we get  
6 access to the information that I was saying -- that I  
7 was asking if it would be available? Because otherwise,  
8 the comments will just say we don't know unless we have  
9 more information. I mean, can we follow up with y'all  
10 fairly quickly after this?

11           **MS. COWDERY:** You can work with staff on that,  
12 and they will get that to you.

13           **MS. MASTERTON:** Okay. Thanks.

14           **MR. MOYLE:** Could I take advantage of the  
15 opportunity for comments in that I think, Susan, the  
16 reason I was asking those questions is I'm appearing --  
17 Jon Moyle from the Keefe Anchor Gordon and Moyle law  
18 firm. CompSouth is a compilation of CLECs, and we were  
19 engaged in the legislative process with our friends.  
20 And I understand that there is a reduction, but our  
21 interest is to make sure that while there are two  
22 baskets, if you will, that the Commission looks at,  
23 retail and wholesale, and the retail obviously has been  
24 changed significantly and is less pronounced, that y'all  
25 still have enough resources, assets, and ability to

1 oversee the wholesale transactions, to the extent  
2 disputes arise between our clients, CLECs and ILECs,  
3 that you have sufficient funds to hear the case, to  
4 administer the case, to run the office the way it needs  
5 to be run and the way it has historically been run in  
6 terms of deciding, promptly deciding those types of  
7 disputes. So that is kind of an overarching point that  
8 I wanted to make.

9 We may take advantage of the opportunity to  
10 submit written comments, but since we have the court  
11 reporter, I felt that it would -- I could go ahead and  
12 go on the record with that as you all are deciding what  
13 adjustments, if any, to make.

14 And Susan and I may have asked for the  
15 information for different reasons. Obviously our desire  
16 is to make sure that there is a level of funding that  
17 will allow you to do your job to make sure that  
18 disputes, if they arise, are able to be resolved in an  
19 expeditious, timely, and judicial manner.

20 Thank you.

21 **MS. COWDERY:** Are there any other comments or  
22 questions?

23 Thank you very much for your participation.  
24 The workshop is adjourned.

25 (The workshop concluded at 10:06 a.m.)

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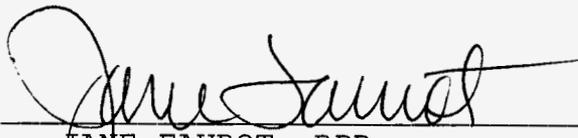
STATE OF FLORIDA        )  
                                  :  
                                  :        CERTIFICATE OF REPORTER  
COUNTY OF LEON        )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 23rd day of August, 2011.

  
\_\_\_\_\_  
JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
(850) 413-6732

Telecommunications Regulatory Assessment Fee  
Comparison and calculation

	040436-TP Actual <u>2005/2006</u>		110224-TP Projected <u>2012/2013</u>
		Revenue at .20%	\$5,925,574
Revenue at .20%	\$11,924,368	Revenue at .16%	\$4,740,459
Expenses	(10,575,403)	Expenses	(3,889,078)
Service charge	(870,479)	Service charge	(379,237)
	<hr style="border-top: 1px solid black;"/>	Reserve	(237,023)
	<b><u>\$478,486</u></b>		<hr style="border-top: 1px solid black;"/> <b><u>\$235,121</u></b>

Parties/Staff Handout  
event date 8/22/11  
Docket No. 110224-TP