

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.

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)
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)
COUNTY OF LEON)

CERTIFICATE OF REPORTER

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/> | Reserve | (237,023) |
| | <u>\$478,486</u> | | <hr/> <u>\$235,121</u> |

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