

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-

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COMMISSION
CLERK

DATE: November 14, 2011
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Kathryn G.W. Cowdery, Senior Attorney, Office of the General Counsel
RE: Docket 110224-TP, Proposed amendment of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies

Please file the attached rule certification packet for the amendment of Rule 25-4.0161, F.A.C., in the docket file listed above.

Thank you.

KC
Attachment

DOCUMENT NUMBER
08368 NOV 14 =
FPSC-COMMISSION CLERK

COMMISSIONERS:
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RONALD A. BRISÉ
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JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

November 14, 2011

VIA HAND DELIVERY

Ms. Liz Cloud
Florida Department of State
Florida Administrative Code, Weekly and Laws
R. A. Gray Bldg., Suite 101
Tallahassee, FL 32399-0250

Re: Rule Certification Packet for Amendment of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies

Dear Ms. Cloud:

Enclosed for filing is a complete rule certification packet for amendment of Rule 25-4.0161, F.A.C., consisting of:

- (1) One compact disc containing the coded text of the rule;
- (2) One copy of the e-mail approval confirmation with the signed certification of materials incorporated by reference form required by Rule 1B-30.005, F.A.C;
- (3) One original and two copies of the signed rule certification form;
- (4) One original and two copies of the coded text of the rule, including the legal citations and history notes;
- (5) One original and two copies of a summary of the rule;
- (6) One original and two copies of a written statement of the facts and circumstances justifying the rule; and
- (7) One original and two copies of a summary of the hearing on the rule.

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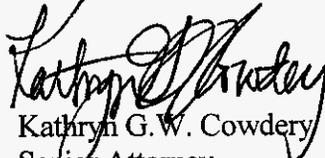
Internet E-mail: contact@psc.state.fl.us

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Ms. Liz Cloud
November 14, 2011
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Please let me know if you have any questions. The contact name and information for this rule are Kathryn G.W. Cowdery, Florida Public Service Commission, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, 413-6216, kcowdery@psc.state.fl.us.

Sincerely,



Kathryn G.W. Cowdery
Senior Attorney

KC
Enclosures

Julie Phillips

From: FL-Rules@dos.state.fl.us
Sent: Thursday, November 10, 2011 4:58 PM
To: Julie Phillips
Cc: firules@dos.state.fl.us
Subject: Reference Material for Rule Adoption Approved

Dear JPhillips:

The reference material for rule adoption you submitted has been approved by the Administrative Code and Weekly Staff.

The approved material is available in the [Review/Modify Agency Reference Material](#) list (Agency Main Menu page).

Rule Number: 25-4.0161

Reference Number: Ref-00760; Reference Name: Pay Telephone Service Provider Regulatory Assessment Fee Return

Reference Number: Ref-00761; Reference Name: Local Telephone Service Provider Regulatory Assessment Fee Return

Reference Number: Ref-00762; Reference Name: Interim Local Telephone Service Provider Regulatory Assessment Fee Return

Reference Number: Ref-00763; Reference Name: Interim Pay Telephone Service Provider Regulatory Assessment Fee Return

Reference Number: Ref-00764; Reference Name: Regulatory Assessment Fee Extension Request

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Administrative Code and Weekly Staff
Division of Library and Information Services
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CERTIFICATION OF MATERIALS INCORPORATED

BY REFERENCE IN RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify pursuant to Rule 1B-30.005, Florida Administrative Code:

(1) That materials incorporated by reference in Rule 25-4.016 have been electronically filed with the Department of State.

(2) That because there would be a violation of federal copyright laws if the submitting agency filed the incorporated materials described below electronically, a true and complete paper copy of the incorporated materials are attached to this certification for filing. Paper copies of the incorporated materials below may be obtained at the agency by [include address(es)/location(s)].

List form number(s) and form title(s), or title of document(s) below:

Form PSC/RAD 26 (12/11), Pay Telephone Service Provider Regulatory Assessment Fee Return;

Form PSC/RAD 159 (12/11), Local Telephone Service Provider Regulatory Assessment Fee Return;

Form PSC/RAD 160 (12/11), Interim Local Telephone Service Provider Regulatory Assessment Fee Return;

Form PSC/RAD 161 (12/11), Interim Pay Telephone Service Provider Regulatory Assessment Fee Return;

Form PSC/ADM 124 (12/11), Regulatory Assessment Fee Extension Request.

Under the provisions of Section 120.54(3)(e)6., F. S., the attached material(s) take effect 20 days from the date filed with the Department of State, or a later date as specified in the rule.



Ann Cole
Commission Clerk

2011 NOV 14 AM 11:20
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA
FILED

CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

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11:30 AM
FALLS CHURCH, VA

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

(a) Are filed not more than 90 days after the notice; or

(b) Are filed not more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

25-4.0161

Under the provision of Section 120.54(3)(e)6., F.S., the rule takes effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



KC



ANN COLE
Commission Clerk

5
Number of Pages Certified

25-4.0161 Regulatory Assessment Fees; Telecommunications Companies.

(1) For the purposes of this rule and except for pay telephone service providers, all incumbent local exchange companies, shared tenant service providers, alternative access vendors, and competitive local exchange companies that hold an active certificate of public convenience and necessity that was obtained prior to July 1, 2011, and all telecommunications companies that hold an active certificate of authority obtained after July 1, 2011, are defined as local telephone service providers. Companies classified as pay telephone service providers are those companies that hold an active pay telephone certificate of public convenience and necessity that was obtained prior to July 1, 2011, and those companies that hold an active pay telephone certificate of authority obtained after July 1, 2011.

(2) (a) (†) For the interim period January 1, 2011 through December 31, 2011, as applicable and as provided in Sections 350.113 and 364.336, F.S., each company shall remit a fee based upon its gross operating revenue as provided below. Each company that has paid by August 15, 2011, regulatory assessment fees for the period January 1, 2011 through June 30, 2011, shall pay a regulatory assessment fee in the amount of 0.0016 of its gross operating revenues derived from intrastate business during the period July 1, 2011 through December 31, 2011. Each company that has not paid any regulatory assessment fees for the period January 1, 2011 through December 31, 2011, shall pay a regulatory assessment fee in the amount of 0.0018 of its gross operating revenues derived from intrastate business. The minimum regulatory assessment fees provided in subsection (2) (b) shall apply and shall be filed in accordance with the schedules provided in subsections (3) and (4). For the purpose of determining this fee, each telecommunications company shall deduct from gross operating revenues any amount paid to another telecommunications company for the use of any telecommunications network to provide service to its customers.

(b) Effective January 1, 2012, as applicable and as provided in Sections 350.113, ~~364.02 (12)~~ 364.02(13) and 364.336, F.S., each company shall remit a fee based upon its gross operating revenue as provided below. This fee shall be referred to as a regulatory assessment fee, and each company shall pay a regulatory assessment fee in the amount of ~~0.0016~~ 0.0020 of its gross operating revenues derived from intrastate business. For the purpose of determining this fee, each telecommunications company shall deduct from gross operating revenues any amount paid to another telecommunications company for the use of any

telecommunications network to provide service to its customers. Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee shall be imposed as follows:

1. ~~(a) Local Telephone Service Provider Exchange Company – \$600 \$1,000; and~~

2. ~~(b) Pay Telephone Service Provider – \$100;~~

~~(c) Shared Tenant Service Provider – \$100;~~

~~(d) Interexchange Company – \$700;~~

~~(e) Alternative Access Vendor – \$600;~~

~~(f) Competitive Local Exchange Company – \$600.~~

~~(3) (2)~~ Telecommunications companies that owed gross regulatory assessment fees of \$10,000 or more for the preceding calendar year shall pay the fee and remit the appropriate form twice a year. The regulatory assessment fee and appropriate form shall be filed no later than July 30 for the preceding period of January 1 through June 30, and no later than January 30 of the following year for the period of July 1 through December 31. Telecommunications companies that owed gross regulatory assessment fees of less than \$10,000 for the preceding calendar year shall pay the fee and remit the appropriate form once a year. The regulatory assessment fee and appropriate form shall be filed no later than January 30 of the subsequent year for the current calendar year operations.

~~(4) (3)~~ If the due date falls on a Saturday, Sunday, or legal holiday, the due date is extended to the next business day. If the fees are sent by registered mail, the date of the registration is the United States Postal Service's postmark date. If the fees are sent by certified mail and the receipt is postmarked by a postal employee, the date on the receipt is the United States Postal Service's postmark date. The postmarked certified mail receipt is evidence that the fees were delivered. Regulatory assessment fees are considered paid on the date they are postmarked by the United States Postal Service or received and logged in by the Commission's Division of Administration Services in Tallahassee. Fees are considered timely paid if properly addressed, with sufficient postage, and postmarked no later than the due date.

~~(5) (4)~~ Commission Form PSC/RAD 159 (12/11) ~~PSC/RAD 25 (04/07)~~, entitled "Local Telephone Service Provider Exchange Company Regulatory Assessment Fee Return," is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00761>; Form PSC/RAD 160 (12/11), entitled "Interim Local Telephone Service Provider Regulatory Assessment Fee Return," is available at

<http://www.flrules.org/Gateway/reference.asp?No=Ref-00762>; Form PSC/RAD 26 (12/11) (04/07), entitled "Pay Telephone Service Provider Regulatory Assessment Fee Return," is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00760>; and Form PSC/RAD 161(12/11) (04/07), entitled "Interim Pay Telephone Service Provider Regulatory Assessment Fee Return," is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00763>; ; Form PSC/RAD 34 (04/07), entitled "Shared Tenant Service Provider Regulatory Assessment Fee Return"; Form PSC/RAD 153 (04/07), entitled "Interexchange Company Regulatory Assessment Fee Return"; Form PSC/RAD 1 (04/07), entitled "Alternative Access Vendor Regulatory Assessment Fee Return"; and Form PSC/RAD 7 (04/07), entitled "Competitive Local Exchange Company Regulatory Assessment Fee Return" These forms are incorporated into this rule by reference and may also be obtained from the Commission's Division of Administrative Services. The failure of a telecommunications company to receive a return form shall not excuse the company from its obligation to timely remit the regulatory assessment fees.

(6) (5) Each telecommunications company shall have up to and including the due date in which to submit the applicable form and:

- (a) Remit the total amount of its fee, or
- (b) Remit an amount which the company estimates is its full fee.

(7) (6) Where the company remits less than its full fee, the remainder of the full fee shall be due on or before the 30th day from the due date and shall, where the amount remitted was less than 90 percent of the total regulatory assessment fee, include interest as provided by subsection (9)(b) paragraph (8)(b) of this rule.

(8) (7) A company may request ~~from the Division of Administrative Services~~ either a 15-day or a 30-day extension of its due date for payment of regulatory assessment fees or for filing its return form by submitting to the Division of Administrative Services Commission Form PSC/ADM 124 (12/11) entitled "Regulatory Assessment Fee Extension Request," which is incorporated into this rule by reference and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00764>. This form may also be obtained from the Commission's Division of Administrative Services.

(a) The request for extension must be received by the Division of Administrative Services at least two weeks before the due date. The request for extension must be submitted on Form PSC/ADM 124 (01/05)

~~and will be granted if the company has applied for the extension within the time required in paragraph (b) below and the company does not have any unpaid regulatory assessment fees, penalties or interest due from a prior year. Form PSC/ADM 124 (01/05), entitled "Regulatory Assessment Fee Extension Request" is incorporated into this rule by reference and may be obtained from the Commission's Division of Administrative Services.~~

~~(b) The request for extension will not be granted if the company has any unpaid regulatory assessment fees, penalties, or interest due from a prior period. The request for extension must be received by the Division of Administrative Services at least two weeks before the due date.~~

~~(c) Where a telecommunications company receives an extension of its due date pursuant to this rule, the telecommunications company shall remit a charge as set out in Section 350.113(5), F.S., in addition to the regulatory assessment fees, as set out in Section 350.113(5), F.S.~~

~~(d) The return forms may be obtained from the Commission's Division of Administrative Services. The failure of a telecommunications company to receive a return form shall not excuse the company from its obligation to timely remit the regulatory assessment fees.~~

~~(9) (8) The delinquency of any amount due to the Commission from the telecommunications company pursuant to the provisions of Section 350.113, F.S., and this rule, begins with the first calendar day after any date established as the due date either by operation of this rule or by an extension pursuant to this rule.~~

~~(a) A penalty, as set out in Section 350.113, F.S., shall apply to any such delinquent amounts.~~

~~(b) Interest at the rate of 12 percent per annum shall apply to any such delinquent amounts.~~

~~(10) (9) The Division of Administrative Services shall send by certified mail a regulatory assessment fee delinquency notice to any company that fails to file a regulatory assessment fee return and that fails to pay the regulatory assessment fee by the date specified in subsection (3) (2), unless the company has met the requirements of subsections (7) (6) and (8) (7).~~

~~(11) (10) If a company fails to pay the regulatory assessment fee within 20 15 days after receiving a delinquency notice, the Division of Administrative Services, in cooperation with the Division of Regulatory Analysis and the Office of General Counsel, will establish a docket and administratively issue a Notice of Proposed Agency Action Order Imposing Penalties and Collection Costs, and Requiring Payment of Delinquent Regulatory Assessment Fees, or Cancelling Certificates or Removing From the Register for~~

Violation of Rule 25-4.0161, F.A.C., and Section 364.336, F.S. The company must pay the past due regulatory assessment fees, the penalty and interest for late payment as provided in Section 350.113, F.S., and as stated in subsection (9) ~~(8)~~ above, and must also pay the applicable penalty stated in subsection (12) ~~(11)~~ for failure to file the regulatory assessment fee return.

(12) ~~(11)~~ Pursuant to Section 364.285, F.S., the Commission has the authority to impose a penalty or cancel a certificate ~~or registration~~ if a company refuses to comply with Commission rules, orders, or Florida Statutes. The penalty, which will include collection costs, for failure to file the regulatory assessment fee return by the date stated in the delinquency notice shall be as follows:

- (a) First violation – \$500;
- (b) Second violation – \$1,000;
- (c) Third violation – \$2,000.

Failure of the company to pay the full amount due and stated in the Notice of Proposed Agency Action will result in the cancellation of the company's certificate. ~~Certificate of Public Convenience and Necessity, or will result in the cancellation of the company's tariff and removal of its name from the Commission's register, whichever is applicable.~~

(13) ~~(12)~~ For a company's fourth failure to pay the regulatory assessment fee after being sent a delinquency notice, Commission staff shall file a recommendation to the Commission for further action.

(14) ~~(13)~~ A company that reapplies for a Certificate of Authority ~~Public Convenience and Necessity, or refiles for registration~~, must pay all prior unpaid regulatory assessment fees, plus the penalty and interest defined in subsection (9) ~~(8)~~, and any prior unpaid penalty assessed in accordance with subsection (11) ~~(10)~~.

Rulemaking Authority 350.127(2) FS. Law Implemented 350.113, 364.285, 364.336 FS. History—New 5-18-83, Formerly 25-4.161, Amended 10-19-86, 1-1-91, 12-29-91, 1-8-95, 12-26-95, 7-7-96, 11-11-99, 12-7-04, 10-6-05, 4-16-07, 12-04-11.

SUMMARY OF RULE

Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications, is amended to reduce regulatory assessment fees from 0.0020 to 0.0016 of gross operating revenues derived from interstate business for telecommunications companies as required by § 364.336, F.S., to redefine company types consistent with statutory changes, including removal of references to interexchange companies, to amend regulatory assessment fee filing forms consistent with the rule amendments, and to clarify requirements for requesting a filing extension.

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING RULE

Rule 25-4.0161, F.A.C., has been amended to reduce the regulatory assessment fee for telecommunications companies under §§ 350.113 and 364.336, F.S., as required by § 364.336(2), F.S. (2011), in order to reflect the reduction in regulation resulting from the amendments to chapter 364, Fla. Stat. (2011). The rule removes references to Interexchange Companies which were removed from Commission regulatory jurisdiction by H.B. 993 (2011). Regulatory assessment fee filing forms were amended to be consistent with the rule changes, and the procedure for requesting a filing extension is amended to require a statement of good cause consistent with s. 350.113(5), F.S.

SUMMARY OF HEARINGS ON THE RULE

No timely request for a hearing was received by the agency, and no hearing was held.

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