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| State of Florida  pscSEAL | | 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: | January 25, 2018 | | |
| TO: | Office of Commission Clerk (Stauffer) | | |
| FROM: | Office of the General Counsel (Page)  Office of Industry Development and Market Analysis (Fogleman, Williams)  Division of Economics (Draper) | | |
| RE: | Docket No. 20170262-TP – Amendments to Rule 25-4.004, F.A.C., Certificates of Necessity or Authority; Application, and repeal of Rule 25-4.005, F.A.C., Transfer of Certificate of Necessity or Authority. | | |
| AGENDA: | 02/06/18 – Rule Proposal – Interested Persons May Participate | | |
| COMMISSIONERS ASSIGNED: | | | All Commissioners |
| PREHEARING OFFICER: | | | Polmann |
| RULE STATUS: | | | Proposal May be Deferred |
| SPECIAL INSTRUCTIONS: | | | None |

Case Background

Section 364.01, Florida Statutes (F.S.), grants the Commission jurisdiction to regulate telecommunications companies. In accordance with Section 364.33, F.S., a person may not provide telecommunications services without a certificate of necessity or a certificate of authority granted by the Commission. Section 364.335, F.S., prescribes the required elements of an application for a certificate of authority, including information demonstrating the applicant’s managerial, technical, and financial ability to provide telecommunications service.

Rule 25-4.004, Florida Administrative Code (F.A.C.), Certificate of Necessity or Authority; Application, and Rule 25-4.005, F.A.C., Transfer of Certificate of Authority, describe the required elements of an application for an original certificate of necessity or authority and the transfer of the certificate of necessity or authority to provide telecommunication service. Staff initiated rulemaking in this docket to modify, streamline, and clarify the application, assist in avoiding applicant confusion, and eliminate redundancy in the rules.

On October 10, 2017, a Notice of Development of Rulemaking was published in the Florida Administrative Register Vol. 43, No. 196, on the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C. The Commission Notice stated that written requests for a rule development workshop must be submitted by October 24, 2017. No requests for a workshop were received.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C. The Commission has jurisdiction pursuant to Section 120.54, F.S., and Chapter 364, F.S.

Discussion of Issues

Issue :

 Should the Commission propose the amendment of Rule 25-4.004, F.A.C., Certificates of Necessity or Authority; Application, and the repeal of Rule 25-4.005, F.A.C., Transfer of Certificate of Necessity or Authority?

Recommendation:

 Yes, the Commission should propose the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify amended Rule 25-4.004, F.A.C., as a minor violation rule. (Fogleman, Williams, Page, Draper)

Staff Analysis:

 Staff recommends the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C., as set forth in Attachment A. Rule 25-4.004, F.A.C., establishes the requirements and the necessary process to apply for a certificate to provide telecommunications service. Rule 25-4.005, F.A.C., sets forth the requirements for the transfer of a telecommunications service certificate.

The staff recommended amendments to Rule 25-4.004, F.A.C., incorporate the requirements of Rule 25-4.005, F.A.C., which would be repealed. Both rules require a nonrefundable application fee of $500. The rule amendments update and streamline the procedures for obtaining an original telephone certificate or the transfer of the certificate. The recommended amendments to Rule 25-4.004, F.A.C., will prevent confusion regarding the documentation provided by the applicant, avoid redundancy, and clarify the application process. The amount of the application fee is unchanged in the proposed amendments.

There are sections of the application form for a certificate that applicants frequently do not answer completely, which leads to the necessity of follow-up questions and additional processing time. Staff has observed that the required financial information is frequently not provided by the applicants.

The recommended changes to the new application form specify that financial statements demonstrating financial ability must be included and that if the applicant does not have audited financial statements, it must be stated and signed by either the applicant’s chief executive officer or chief financial officer affirming that the financial statements are true and correct. The new application form now requires that if a full three years of historical data is not available, the application must include “both historical financial data and pro forma data” to supplement the application. Staff believes that these recommended changes in the form may help limit the number of incomplete forms submitted to the Commission, thus, making the process more efficient.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment B to this recommendation. The SERC analysis also includes whether the rule amendment is likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after implementation.

The SERC concludes that applicants may see cost savings because the proposed amendments clarify and streamline the process, and eliminate redundancy. The SERC states that there is no change in the filing fee. Staff believes that the rule amendments will not likely directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in Florida within one year after implementation.

Further, the SERC concludes that the rule amendments will not likely have an adverse impact on economic growth, private-sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. Thus, the rule amendments do not require legislative ratification pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the rule amendments may bring cost savings to small businesses, small cities and small counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

Minor Violation Rules Certificate

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption, the Commission is required to certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. A list of Commission rules designated as minor violation rules is published on the Commission’s website, as required by Section 120.569(2), F.S. If the Commission proposes the amendment of Rule 25-4.004, F.A.C., the rule would continue to be considered a minor violation rule. Therefore, for purposes of filing an amended rule for adoption with the Department of State, staff recommends that the Commission certify proposed amended Rule 25-4.004, F.A.C., as a minor violation rule. If the Commission proposes the repeal of Rule 25-4.005, F.A.C., the rule will be deleted from the Commission’s list of rules designated as minor violation rules.

Conclusion

For the reasons described above, staff recommends that the Commission should propose the amendment of Rule 25-4.004, F.A.C., and the repeal of Rule 25-4.005, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify the proposed amended Rule 25-4.004, F.A.C., as a minor violation rule.

Issue :

 Should this docket be closed?

Recommendation:

 Yes, if no requests for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

Staff Analysis:

 If no requests for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

**25-4.004 Application for Original ~~Certificates Necessity~~ or Transfer of Certificate of Authority~~; Application~~.**

(1) In order to ~~No person shall~~ provide telecommunications service ~~services~~ ~~to~~ ~~the public without~~ either a certificate of necessity issued prior to July 1, 2011, or a certificate of authority issued after July 1, 2011, is required. Service ~~Services~~ may not be provided, nor may deposits or payment for service ~~services~~ be collected, until the effective date of a certificate or transfer of a certificate. However, marketing and development activities may begin prior to the effective date of the certificate at the applicant’s risk that the certificate may not be granted. Prior to certification, the applicant must advise the public in any customer contacts or advertisements that certification has not and may not be granted.

(2) Each ~~An~~ applicant ~~for a certificate of authority~~ shall apply by using ~~submit an application on~~ Form PSC 1020 (4/18) ~~PSC/TEL 162 (12/12)~~, entitled “Application ~~Form~~ for Original Authority or Transfer of Authority to Provide Telecommunications ~~Company~~ Service In ~~Within~~ the State of Florida.~~,~~” The application ~~which~~ is incorporated into this rule by reference and ~~which~~ is available at [Dept. of State hyperlink], [~~http://www.flrules.org/Gateway/reference.asp?No=Ref-02034~~](http://www.flrules.org/Gateway/reference.asp?No=Ref-02034), and from the Florida Public Service Commission’s website at www.floridapsc.com/utilities/TelecomCLECApplication/ [~~www.floridapsc.com/utilities/telecomm/~~](http://www.floridapsc.com/utilities/telecomm/)~~,~~ or from ~~by contacting~~ the Florida Public Service Commission’s Office of Industry Development and Market Analysis ~~Telecommunications~~. Except as provided in Section 364.33, F.S., a certificate holder and the person seeking to obtain the certificate by transfer from the holder shall submit a joint application using form PSC1020 (4/18). A non-refundable application or transfer fee of $500.00 must accompany the filing of each application. The Commission’s acceptance of the application fee does not imply that the application~~,~~ or transfer~~,~~ ~~or sale~~ of a certificate will be granted.

(3) The company transferring the certificate shall pay to the Florida Public Service

Commission all regulatory assessment fees owed pursuant to Section 364.336, F.S., and Rule 25-4.0161, F.A.C.

(4)~~(3)~~ The ~~An~~ application for certificate of authority or transfer shall be filed with the Office of Commission Clerk~~,~~ ~~Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850~~.

~~(4) Each holder of a certificate of necessity or authority shall file with the Commission’s Office of Commission Clerk updated information for the following items within ten days after a change occurs:~~

~~(a) The street address of the certificate holder including number, street name, city, state and zip code, and the mailing address if it differs from the street address.~~

~~(b) Name, title, and phone number of the individual responsible for contact with the Commission.~~

*Rulemaking Authority 350.127(2) FS. Law Implemented 350.113 ~~350.127(1)~~, 364.32, 364.33, 364.335, FS. History–New 12-1-68, Formerly 25-4.04, Amended 12-16-12, \_\_\_\_\_\_\_\_\_\_\_\_.*

**25-4.005 Transfer of Certificate of Necessity or Authority.**

~~(1) Except as provided in Section 364.33, F.S., a certificate holder and the person seeking to obtain the certificate by transfer from the holder shall submit a joint application on Commission Form PSC/TEL 162 (12/12), entitled “Application Form for Authority to Provide Telecommunications Company Service Within the State of Florida,” incorporated by reference into Rule 25-4.004, F.A.C. The application shall be filed with the Office of Commission Clerk. A nonrefundable application fee of $500.00 must accompany the filing of each application to cover processing costs. The Commission’s acceptance of the application fee does not imply that the application for transfer of a certificate will be granted.~~

~~(2) The company transferring the certificate shall pay to the Commission all regulatory assessment fees owed pursuant to Sections 350.113 and 364.336, F.S. and Rule 25-4.0161, F.A.C.~~

*Rulemaking Authority 350.127(2) FS. Law Implemented 350.113, 364.335, 364.336 FS. History–New 12-1-68, Amended 5-4-81, Formerly 25-4.05, Amended 9-16-99, 12-16-12, Repealed\_\_\_\_\_\_\_\_\_\_\_*

























