



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 27, 1998

TO: JULIA L. JOHNSON, CHAIRMAN
 J. TERRY DEASON, COMMISSIONER
 SUSAN F. CLARK, COMMISSIONER
 JOE GARCIA, COMMISSIONER
 E. LEON JACOBS, COMMISSIONER
 BLANCA BAYO, DIRECTOR OF RECORDS & REPORTING
 ALL INTERESTED PARTIES

FROM: DIANA W. CALDWELL, DIVISION OF APPEALS

RE: STAFF'S DRAFT OF AMENDED PROPOSED RULES FOR DOCKET ~~REVISION~~ ^{Due}
 PROPOSED RULES FOR PREPAID CALLING CARD SERVICES

Attached is staff's draft of amendments to the proposed rules relating to prepaid calling services (PPCS). These amendments incorporate some of the issues raised in comments filed by interested persons within the 21 days after the rules were proposed and were also a result of meetings held with those that participated in the prehearing conference on January 14, 1998. While it was anticipated that a stipulation of the rules would be worked out, all parties that submitted comments were not in attendance at the prehearing conference. Staff can represent that the parties in attendance at the prehearing conference are in agreement with the rules. Staff further represents that a copy of the revised rules and this memorandum have been sent to all persons that provided comments. Staff recommends that the changes be incorporated and the rules be adopted by the Commission at the rule hearing to be held January 30, 1998.

This memorandum will explain the overall objective of the rules, give a description of each change recommended by staff and the rationale for each of the changes, and then discuss why other changes suggested in the comments were rejected.

Overall objective

The purpose of the rules is to identify the entity responsible for the debit card and to establish rules by which that entity must abide. In the rules, the term "company" is the entity that is providing the prepaid calling services. By rule, that company's name must be listed on the card as the provider of the PPCS. The company listed on the card must meet all requirements of the rules. Where the company violates any of the rules, it shall be held accountable.

Recommended changes

Page 1, line 19: the language in (1) has been revised for clarity.

From: "This part applies to companies using their own or resold telecommunications networks to provide prepaid calling services (PPCS)."

To: "This part applies to companies that provide prepaid calling services (PPCS) to the public using its own or resold telecommunications networks."

This change clarifies the distinction between companies that actually provide prepaid service and those companies that provide the underlying network access to another telecommunications company that then resells the service downstream or to the public.

Page 1, line 22: Subsection (2) that provided a company could petition for a waiver of the rules has been deleted. Section 120.542, Florida Administrative Code, provides procedures for variances and waivers. Uniform rules to provide the procedure have been adopted. It is not necessary that the PPCS rules have this provision. Subsection (3) was renumbered Subsection (2).

Page 2, line 6-8: The definition of the term "company" has been revised to be consistent with the scope of the rule. "Company" is defined to mean:

From: "any entity providing prepaid calling services using its own or resold telecommunications network to provide prepaid calling services.

To: "any entity providing prepaid calling services to the public using its own or resold telecommunications network."

Page 3, lines 2 - 8: This part of the paragraph was revised as the same concept could be described using fewer words. The intent that a company can use a "doing business as" (or d/b/a) name so long as the name is registered with the Secretary of state and is reflected on its Certificate from the Commission. The company must register the name and be certificated in that name prior to using the name on the card.

Page 4, lines 13-21: (Subsection (2) The Commission does not have jurisdiction over the downstream retailers and distributors such as Walmart and K-Mart (unless they are the provider or company). The prior language assumed the company had control over the distributor's premises and control over the display. The following change is recommended:

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From: "Each company shall legibly display the following information either on the card, packaging, or in a prominent area at the point of sale of the PPCS in such a manner that the consumer may make an informed decision prior to purchase: . . ."

To: "Each company shall provide the following information legibly printed either on the card, packaging, or display visible in a prominent area at the point of sale of the PPCS in such a manner that the consumer may make an informed decision prior to purchase: . . ."

The revised language requires the company to provide the appropriate information to the distributors and retailers. If the company does not provide such information it is in violation of the rules. Because the Commission does not have jurisdiction, nor should it want jurisdiction, over the retailers an additional provision is added after paragraph (c) that: "The company must insure by contract with its retailers or distributors that the information is provided to the consumer." It would be the company's responsibility to enforce the contract. The Commission can find a violation if the company fails to have a provision in its contract or fails to enforce it.

Page 5, line 5: Subsection (4) was clarified to require that a company must electronically voice record end user complaints. A comment was filed that the term "record" could mean the operator records the complaint by taking notes.

Page 5, line 10: Subsection (5) was clarified to provide that the rates displayed were to be maximum rates: ". . . shall be no more than those reflected in the tariff or price list for PPCS."

Page 6, line 6: Subsection (12) is added to provide a grandfather clause for cards that are currently in circulation. After a date certain, companies cannot sell cards that do not meet the requirements of the rules. This allows companies to deplete any backlog of cards that have already been printed. All other provisions that are not associated with what is printed on the card must be complied with by the company upon the effective date of the rules.

Page 7, line 19: The term "network provider" is added to clarify that the rules are primarily requirements on the company or provider of PPCS. Companies must assure compliance with the rules both upstream (network providers) and downstream (distributors, retailers, marketing agents, etc.). The facilities based providers are still required by Rule 25-24.4701, Florida Administrative Code, to only sell to certificated companies.

Page 8, lines 1-4: The language for the penalty provision was modified for clarity. As worded, it appeared that the Commission had no discretion in imposing the minimum penalty, even when there was no willful violation on the part of the company and as required by Section 364.285, Florida Statutes. The rephrased language clarifies that willful violation would have been found before imposing the minimum penalty.

Other Comments

Joint Administrative Procedures Committee: JAPC stated that without stated standards, the Commission would have unbridled discretion in setting fines. Staff contacted JAPC staff and explained that the Commission reviews violations and assesses penalties on a case-by-case basis. Because of the unique nature of each situation that requires a case-by-case analysis, specific standards would be difficult, if not impossible, to adopt at this time. If, after further experience, set standards emerge within the policies, staff will draft a rule for consideration. Staff has recommended revision of the language for other reasons as explained earlier.

Sprint Communications Company Limited Partnership (Sprint): Sprint argued that it was difficult to tariff a payphone surcharge as those surcharges are negotiated. Staff disagrees, as those payphone surcharges that are negotiated must still be tarified and are therefore available to provide the information to the customer. Sprint also argues that the balance of use can only be provided in monetary terms. It is staff's position that the term "use" is generic and can be expressed in minutes or monetarily. Sprint argues that the expiration date requirement (one year from date of first use) would cause an indefinite liability on the company where a person may never use the card. Staff's response is that the company can simply print a different expiration date on the card. The rule is a default.

PhoneTime, Inc. (PTI): PTI argues that the toll free requirement is too restrictive on competition. PTI suggests allowing local numbers to be used. It is staff's position that a local number would constitute a hidden cost on the card. PTI also argues that there are other ways to provide consumer information such as announcing the remaining balance before each call is complete in lieu of having the information available on a separate customer service call. PTI also argued for a balanced approach to customer service, i.e., live operators for peak hours. It is staff's position that the current structure for customer information is both reasonable and flexible, and is somewhat consistent with PTI's arguments. PTI further argued that the standard for providing information at the point of sale should be "best efforts", i.e. contracts with distributors and retailers. Staff has suggested changes in the rule that are consistent with PTI's "best efforts" argument. Finally, PTI argued that the

trigger for refunds needs to be more specific. It is staff's position that the rules are clear as to when refunds are appropriate, and other companies have concurred.

SmarTalk TeleServices, Inc. (SmarTalk): SmarTalk argues that they did not have control over prices charged downstream and should, therefore, not be held responsible to provide rate information. Staff's response is that these rules require the posting of the maximum rate which allows for discounting of the service without violation of the rules. SmarTalk also argues that it is impossible to inform the customers of the retail price. In response, staff argues that the company is only required to inform customers of the maximum charge; if the actual charge is less, it is doubtful the customer will complain. SmarTalk further argues that because the rules only apply to intrastate calls, that the rules are burdensome on companies providing interstate and international calls. It is staff's position that the burden to the company on disclosing only intrastate information is outweighed by the public's right to the information, particularly when the customer paid up front for the service to be rendered.

Dometel Communications, Inc., trading as "TRICOM International" (TRICOM): TRICOM argues that the rules are ambiguous as to whom they apply. It is staff's position that the changes to the rules clarifies that the rules apply to the company whose name appears on the card as the provider. Subsequent distributors or retailers are not affected. The company/provider must meet all the requirements of the rules and assure compliance thru contracts with the network provider upstream and the distributors and retailers downstream. It is the company providing the service that has the ultimate responsibility for complying with the rules.

DWC
Attachment
Draft amended rules

1 RULES OF THE FLORIDA PUBLIC SERVICE COMMISSION

2 RULES GOVERNING PREPAID CALLING SERVICES

3 Part XVI

4
5 25-24.900 Scope

6 25-24.905 Terms and Definitions

7 25-24.910 Certificate of Public Convenience and Necessity

8 Required

9 25-24.915 Tariffs or Price Lists

10 25-24.920 Standards for Prepaid Calling Services and Consumer

11 Disclosure

12 25-24.925 Refunds

13 25-24.930 Adequacy of Service

14 25-24.935 Discontinuance of Service

15 25-24.940 Penalties

16
17 RULES GOVERNING PREPAID CALLING SERVICES

18 25-24.900

19 (1) This part applies to companies that provide prepaid
20 calling services to the public using its own or resold
21 telecommunications networks.

22 (2) Prepaid calling services provided without compensation
23 are exempt from Part XVI.

24 Specific Authority: 350.127(2), F.S.

25 Law Implemented: 364.01, 364.19, 364.337(4), F.S.

CODING: Words underlined are additions; words in
struck-through type are deletions from existing law.

1 History: New

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3 25-24.905 Terms and Definitions.

4 For purposes of this part, the definitions to the following terms
5 apply:

6 (1) "Company" means any entity providing ~~public~~ calling
7 services to the public using its own or ~~leased~~ telecommunications
8 network.

9 (2) "Conversation time" is the time when two-way
10 telecommunications is possible.

11 (3) "Prepaid Calling Services (PCS)" means any prepaid
12 telecommunications service that ~~allows~~ users to originate
13 calls through an access number and ~~an~~ ~~area~~ ~~code~~, whether
14 manually or electronically dialed.

15 (4) "Prepaid Calling Card" or "Card" means any object
16 containing an access number and ~~an~~ ~~area~~ ~~code~~ that enables an
17 end user to use PCS.

18 Specific Authority: ~~Section~~ (2), P.S.

19 Law Implemented: ~~Sections~~ 01, 02, 03, 364.051, 364.335, 364.337(4) P.S.

20 History: New

21

22 25-24.910 Certificate of Public Convenience and Necessity

23 Required.

24 A company shall not provide PCS without first obtaining a
25 certificate of public convenience and necessity as a local

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1 exchange company, alternative local exchange company, or
2 interexchange company. The name used as the provider of PPCS
3 printed on the prepaid calling card shall appear identical to the
4 name in which the certificate is issued. A "doing business as"
5 name may be used in lieu of the certificated name if it is
6 registered as a fictitious name with the Florida Division of
7 Corporations and reflected on the certificate before the name is
8 used on the card.

9 Specific Authority: 350.127(2), F.S.

10 Law Implemented: 364.33, 364.335, 364.337, F.S.

11 History: New

12

13 25-24.915 Tariffs and Prices Lists.

14 (1) This section applies to all companies as defined in 25-
15 24.905(1), regardless of certificate type or other tariff or price
16 list requirements.

17 (2) All companies shall file a tariff or price list for PPCS.

18 (3) All companies shall include in its tariff or price list
19 the following information:

20 (a) Maximum amount a person will be charged per minute for
21 PPCS and

22 (b) Applicable surcharges.

23 Specific Authority: 350.127(2), F.S.

24 Law Implemented: 364.04, 364.051, 364.057, 364.08, 364.09,

25 364.10, 364.19, 364.27, 364.337, F.S.

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struck-through type are deletions from existing law.

1 History: New

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3 25-24.920 Standards For Prepaid Calling Services and Consumer
4 Disclosure.

5 (1) The following information shall be legibly printed on the
6 card:

7 (a) The Florida certificated name or "doing business as"
8 name as provided for by Rule 25-24.910 clearly identified as the
9 provider of the PPCS;

10 (b) Toll-free customer service number;

11 (c) Toll-free network access number; and

12 (d) Authorization code, if applicable to access service.

13 (2) Each company shall provide the following information
14 legibly printed either on the card packaging, or display visible
15 in a prominent area at the point of sale of the PPCS in such a
16 manner that the consumer may make an informed decision prior to
17 purchase:

18 (a) Estimated charge per minute for PPCS;

19 (b) Access surcharges; and

20 (c) Expiration policy, if applicable.

21 The company must make by contract with its retailers or
22 distributors that the information is provided to the consumer.

23 Each company shall provide through its customer service
24 number the following information:

25 (a) Certificate number;

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- 1 (b) Rates and surcharges;
2 (c) Balance of use in account; and
3 (d) Expiration date or period, if any.
4 (4) Each company shall provide a live operator to answer
5 incoming calls 24 hours a day, 7 days a week or shall
6 electronically voice record and user complaints. A combination of
7 live operators or recorders may be used. If a recorder is used,
8 the company shall attempt to contact each complainant as later
9 than the next business day following the date of the recording.
10 (5) The rates displayed in accordance with paragraph (2) above
11 shall be no more than those reflected in the tariff or price list
12 for PPCS.
13 (6) A company shall not reduce the value of a card by more
14 than the charges printed on the card, packaging, or visible
15 display at the point of sale. The service may, however, be
16 recharged by the consumer at a rate higher than the rate at
17 initial purchase of the recharge. The higher rate and surcharges
18 shall be no more than the rates and surcharges in the tariff or
19 price list. The consumer shall be informed of the higher
20 charges at the time of recharge.
21 (7) The billing increment shall not exceed one minute.
22 (8) Each company shall only charge for conversation time plus
23 applicable surcharges.
24 (9) Conversation time of less than a full minute shall not be
25 rounded up beyond the next full minute.

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1 (10) Cards without a specific expiration period printed on the
2 card, and with a balance of service remaining, shall be considered
3 active for a minimum of one year from the date of first use, or if
4 recharged, from the date of the last recharge.

5 (11) If PPCS are sold without a card or printed material,
6 tariffed charges and surcharges shall be disclosed at the point of
7 sale.

8 (12) All cards sold by the company after July 1, 1988, must
9 comply with this rule.

10 Specific Authority: 359.127(2), F.S.

11 Law Implemented: 364.01, 364.03, 364.19 F.S.

12 History: New

13
14 25-24.925 Refunds.

15 (1) Each company shall have a refund policy that meets the
16 following minimum requirements:

17 (a) If PPCS are required unusable for reasons beyond
18 the consumer's control, and have not exceeded the expiration
19 period, each company shall provide a refund equal to the value
20 remaining in the card.

21 (b) Refunds may be cash or replacement service, at the
22 company's option, but must be made to the end user within 60 days
23 of notification by the end user.

24 (c) Each company may, but shall not be required to, provide a
25 refund when a card has been lost or stolen.

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1 Specific Authority: 350.127(2), F.S.

2 Law Implemented: 364.01, 364.19, F.S.

3 History: New

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5 25-24.930 Adequacy of Service.

6 Each company shall ensure that:

7 (1) A minimum of 95 percent of all call attempts shall be
8 completed to the called party. Station busies will be counted as
9 completed calls.

10 (2) A minimum of 95 percent of all call attempts shall be
11 completed to a company's toll-free customer service number.
12 Station busies will not be counted as completed calls.

13 (3) A minimum of 97 percent (excluding a one-second
14 variation) timing accuracy of completion time shall be achieved.

15 Specific Authority: 350.127(2), F.S.

16 Law Implemented: 364.01, 364.19, F.S.

17 History: New

18
19 25-24.935 Adequacy of Service.

20 A company shall be responsible for ensuring, either through its
21 contracts with its network provider, distributors, or marketing
22 agents, or other means, that end user purchased cards remain
23 usable in accord with Rule 25-24.920(10).

24 Specific Authority: 350.127(2), F.S.

25 Law Implemented: 364.01, 364.19, F.S.

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1 History: New

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3 25-24.940 Penalties.

4 Where a penalty is imposed for a finding that an uncertificated
5 company has provided PPS within the state of Florida, the penalty
6 shall be no less than \$1,000.

7 Specific Authority: 350.127 (2) F.S.

8 Law Implemented: 364.285 F.S.

9 History: New

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