BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of rulemaking to amend Rules 25-4.004 and 25-4.005, and to repeal Rules 25-24.565, 25-24.567, 25-24.568, 25-24.569, 25-24.572, 25-24.705, 25-24.710, 25-24.715, 25-24.720, 25-24.725, 25-24.730, 25-24.735, 25-24.745, 25-24.800, 25-24.805, 25-24.810, 25-24.815, and 25-24.820, F.A.C.

DOCKET NO. 120241-TP ORDER NO. PSC-12-0637-FOF-TP ISSUED: November 30, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman LISA POLAK EDGAR ART GRAHAM EDUARDO E. BALBIS JULIE I. BROWN

NOTICE OF ADOPTION OF RULES

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has adopted without changes the amendment of Rules 25-4.004 and 25-4.005, Florida Administrative Code (F.A.C.), relating to application for and transfer of certificates of authorization for telecommunications companies, and the repeal of Rules 25-24.565, 25-24.567, 25-24.568, 25-24.569, 25-24.572, 25-24.705, 25-24.710, 25-24.715, 25-24.720, 25-24.725, 25-24.730, 25-24.735, 25-24.745, 25-24.800, 25-24.805, 25-24.810, 25-24.815, and 25-24.820, F.A.C., relating to application for and transfer of certificates for alternative access vendors, shared tenant service, and competitive local exchange companies.

The rules were filed with the Department of State on November 26, 2012 and will be effective on December 16, 2012. A copy of the rules as filed with the Department is attached to this Notice.

This docket is closed upon issuance of this notice.

DOCUMENT NUMBER-DATE

07927 NOV 30 ≥

FPSC-COMMISSION CLERK

By ORDER of the Florida Public Service Commission this 30th day of November, 2012.

ANN COLE

Commission Clerk

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850) 413-6770

www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

25-4.004 Certificates of Public Convenience and Necessity or Authority; Application.

- (1) No person shall provide telecommunications 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. Services may not be provided, nor may deposits or payment for services be collected, until the effective date 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 applicant for a certificate of authority shall submit an application on Form PSC/TEL 162 (12/12), entitled "Application Form for Authority to Provide Telecommunications Company Service Within the State of Florida," which is incorporated into this rule by reference and which is available at

http://www.flrules.org/Gateway/reference.asp?No=Ref-02034, from the Commission's website at

www.floridapsc.com/utilities/telecomm/, or by contacting the Commission's Office of Telecommunications. A nonrefundable application fee of \$500.00 must accompany the filing of each application.

- (3) An application for certificate of authority 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.

 Except as provided in Chapter 364, F.S., no person shall begin the construction or operation of any telephone line, plant or system or an extension thereof or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Florida Public Service Commission a certificate that the present or future public

convenience and necessity require or will require such construction, operation or acquisition.

Rulemaking Authority 350.127(2) FS. Law Implemented <u>350.127(1)</u>, 364.33, <u>364.335</u>, FS. History–Revised 12-1-68, Formerly 25-4.04, <u>Amended</u>

25-4.005 Transfer of Certificate of Public Convenience and Necessity or Authority As to All or Portion of Service

Area.

- (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, Florida Administrative Code.
- (1) Request for approval by the Commission of transfer of any certificate of public convenience and necessity (or portion thereof) shall be made by joint petition of the certificate holder and transferee after reasonable notice has been given to all subscribers affected by the proposed transfer. Requests for approval shall be accompanied by an affidavit that notice of intention to file the petition has been given:
- (a) By mail or personal delivery to the governing bodies of the counties and municipalities affected, to the public counsel, and to the Commission,
- (b) By a legal advertisement in a newspaper of general circulation in the area affected and published on two (2) separate occasions at least two (2) weeks prior to the filing of the joint petition on the proposed transfer, and (c) By written notice subject to Commission approval, issued to each subscriber in the area to be transferred

concurrent with the filing of the petition.

- (2) Upon approving a transfer of certificate, or portion thereof, the Commission will cancel same and reissue in the name of the transferee or amend the description of the service area or both.
- (3) Such joint petitions shall include detailed descriptions of the affected boundaries; the number of subscribers, if any, in each petitioned area; changes in rates; service being provided by either petitioner in areas to be transferred; pending applications for service held by either petitioner; changes in calling scope; customers to be transferred; deposits and deposit interest; any financial exchange or consideration for the proposed change, and a list by name and telephone number of all customers who will be exempt from the proposed change.
- (4) Any subscriber or group of subscribers of a telephone company may petition the Commission for transfer from the service area of such telephone company to that of another telephone company serving contiguous territory.

 (5) If a customer survey is conducted by a telephone company among customers affected by the proposed transfer, return postage shall be paid by the company serving the affected customer and survey ballots shall be returnable to the Public Service Commission, Attention: Division of Regulatory Analysis, for tabulation.

Rulemaking Authority 350.127(2) FS. Law Implemented <u>350.113</u>, 364.335, <u>364.336</u> FS. History-New 12-1-68, Amended 5-4-81, Formerly 25-4.05, Amended 9-16-99,

25-24.565 Certificate of Public Convenience and Necessity Required.

- (1) No person shall provide shared tenant service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. However, acquisition of equipment and facilities, as well as advertising and other promotional activities, may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contracts for advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.
- (2) On or after January 1, 1996, STS providers with certificates granted prior to January 1, 1996, are authorized to

application must be made for such authority.

provide shared tenant service statewide to tenants as defined in subsection 25-24.560(10), F.A.C. Rulemaking Authority 350.127(2) FS. Law Implemented 364.33, 364.335, 364.339 FS. History-New 1-28-91, Amended 7-29-97, Repealed 25-24.567 Application for Certificate. (1) An applicant desiring to provide shared tenant service shall submit an application on Commission Form PSC/TEL 37 (5/08), which is incorporated into this rule by reference. Form PSC/TEL-37 (5/08), entitled "Application Form for Authority to Provide Shared Tenant Service Within the State of Florida," may be obtained from the Commission's website at www.floridapse.com/utilities/telecomm/ or by contacting the Commission's Division of Regulatory Analysis. A non-refundable application fee of \$250.00 must accompany the filing of all applications. (2) An original and one copy of the application shall be filed with the Office of Commission Clerk. (3) A certificate will be granted if the Commission determines that such approval is in the public interest. (4) Any shared tenant service authority granted hereafter is subject to the following: (a) Shared tenant authority granted to all companies is on a statewide basis and is restricted to tenants as defined in subsection 25-24.560(10), F.A.C. (b) Each shared tenant service applicant shall: 1. Advise all customers of its current rates and conditions for resold local exchange service and its quality of service standards. 2. Inform each customer in advance of agreement to provide service, that the Florida Public Service Commission will not set rates or regulate the service quality standards. (c) A certificate to provide shared tenant service does not carry with it the authority to provide competitive local

exchange telecommunication, alternative access vendor, interexchange or pay telephone service. A separate

Rulemaking Authority 350.127(2) FS. Law Implemented 364.33, 364.335, 364.339, 364.345 FS. History-New 1-28-91, Amended 5-8-91, 11-20-91, 7-29-97, 1-5-06, 5-29-08, Repealed ______.

25-24.568 Improper Use of a Certificate.

No certificate of public convenience and necessity authorizing shared tenant service may be assigned or transferred by the holder to another without prior Commission approval. No certificate shall be used as collateral for any purpose.

Rulemaking Authority 350.127(2) FS. Law Implemented 364.33, 364.335, 364.339, 364.345 FS. History-New 1-28-91, Amended 7-29-97, Repealed ______.

25-24.569 Application for Approval of Sale, Assignment or Transfer of Certificate.

(1) A company desiring to obtain a certificate by sale, assignment or transfer from the holder thereof shall submit an application jointly with the certificate holder on Commission Form PSC/TEL 37 (5/08), which is incorporated into this rule by reference. Form PSC/TEL 37 (5/08) is entitled "Application Form for Authority to Provide Shared Tenant Service Within the State of Florida." The application form may be obtained from the Commission's website at www.floridapse.com/utilities/telecomm/ or by contacting the Commission's Division of Regulatory Analysis. A nonrefundable application fee of \$250.00 must accompany each application. The Commission's acceptance of the application fee does not imply that the application for sale, assignment or transfer of a certificate will be granted.

- (2) An original and one copy of the application shall be filed with the Office of Commission Clerk.
- (3) An application for sale, assignment or transfer of a certificate will be granted if the Commission determines that such approval is in the public interest.
- (4) A certificate may be sold, assigned or transferred only as a whole.

Rulemaking Authority 350.127(2) FS. Law Implemented 364.32, 364.33, 364.335, 364.337, 364.339, 364.345 FS.

History-New 1-28-91, Amended 11-20-91, 7-29-97, 1-5-06, 5-29-08, Repealed

25-24.572 Cancellation of a Certificate.

For purposes of this part the following definitions apply:

(1) The Commission may cancel a company's certificate for any of the following reasons: (a) Violation of the terms and conditions under which the authority was originally granted; (b) Violation of Commission rules or orders; or (c) Violation of Florida Statutes. (2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing. Cancellation of a certificate shall be ordered subject to the holder providing the following information: (a) Statement of intent and date to pay Regulatory Assessment Fee. (b) Statement of why the certificate is proposed to be cancelled. (c) Proof of individual customer notice regarding discontinuance of service. (d) Statement on treatment of customer deposits and final bills. Rulemaking Authority 350.127(2) FS. Law Implemented 350.113, 350.127(1), 364.285, 364.339, 364.345 FS. History-New 1-28-91, Amended 7-29-97, Repealed 25-24.705 Scope and Waiver. (1) This part applies to every person or company providing Alternative Access Vendor (AAV) service. Chapters 25-4, 25-9 and 25-14, E.A.C., shall apply to Alternative Access Vendor service only as provided in this part. (2) An AAV service provider may petition for a waiver of any provision of this part. The Commission may grant a waiver to the extent that it determines that a waiver is in the public interest. The Commission may grant the petition in whole or in part and may prescribe different requirements than are set forth in this part. In disposing of a petition, the Commission shall consider the factors enumerated in Section 364.337(4), Florida Statutes (1995). Rulemaking Authority 350.127(2) FS. Law Implemented 364.01, 364.337(1), (2), (6) FS. History-New T-8-95, Repealed 25-24.710 Terms and Definitions.

- (1) "Affiliated Entity." An entity (whether corporation, partnership, proprietorship or other form of business organization) is affiliated with another entity if one has a majority ownership interest in the other.
- (2) "Alternative Access Vendor (AAV)." A provider, other than a local exchange telecommunications company, of Alternative Access Vendor Service.
- (3) "Alternative Access Vendor Service." The provision of local private line service between an entity and its own facilities or the facilities of an affiliated entity at another location or the provision of special access service between an end-user and an interexchange company.
- (4) "Private line service." Any point-to-point or point-to-multipoint service dedicated to the exclusive use of the end-user for the transmission of any telecommunications service.
- (5) "Special Access Service." Private line service which is connected from the end user's premises to an interexchange company.

Rulemaking Authority 350.127(2) FS. Law Implemented 364.01, 364.02, 364.337 FS. History-New 1-8-95,

Repealed .

- 25-24.715 Certificate of Public Convenience and Necessity Required.
- (1) No person shall provide Alternative Access Vendor Service without first obtaining a Certificate of Public Convenience and Necessity from the Commission.
- (2) A certificate authorizes the vendor to provide Alternative Access Vendor Service statewide as well as authority to provide interexchange private line service.
- (3) A certificate to provide Alternative Access Vendor Service does not authorize provision of interexchange switched service, shared tenant service, pay telephone service or any other telecommunications services requiring certification by this Commission. A separate application must be made for such authority.
- (4) Applicants for a certificate shall not provide service, collect deposits or collect payment for services until a certificate becomes effective. However, at their own risk, applicants may acquire equipment and facilities and may

advertise and engage in promotional activities before a certificate becomes effective. In contacts with potential customers or advertisements before certification, applicants shall advise the potential customer that certification has not and may never be granted. Rulemaking Authority 350.127(2) FS. Law Implemented 364.33, 364.335, 364.337 FS. History-New 1-8-95, Repealed 25-24.720 Application for Certificate. (1) An applicant seeking to provide Alternative Access Vendor service shall submit an application on Commission Form PSC/TEL 43 (5/08), entitled "Application Form for Authority to Provide Alternative Access Vendor Service within the State of Florida," which is incorporated into this rule by reference. The form may be obtained from the Commission's website at www.floridapsc.com/utilities/telecomm/ or by contacting the Division of Regulatory Analysis. A nonrefundable application fee of \$250.00 must accompany each application to cover processing costs. The Commission's acceptance of the application fee does not imply that a certificate will be granted. (2) An original and one copy of the application shall be filed with the Office of Commission Clerk. (3) A certificate will be granted if the Commission determines that such approval is in the public Interest. Rulemaking Authority 350.127(2) FS. Law Implemented 364.33, 364.335, 364.337, 364.345 FS. History-New 1-8-95, Amended 1-5-06, 5-29-08, Repealed . 25-24.725 Certificates Not Transferable. Certificates of public convenience and necessity authorizing Alternative Access Vendor service may not be sold, assigned or transferred by the holder without prior Commission approval. Certificates shall not be used as collateral for any purpose. Rulemaking Authority 350.127(2) FS. Law Implemented 364.33, 364.335, 364.337, 364.345 FS. History-New 1-8-95, Repealed .

25-24.730 Application for Approval of Sale, Assignment, or Transfer of Certificate.

- (1) A person seeking to obtain a certificate by sale, assignment or transfer from the holder shall submit an application jointly with the certificate holder on Commission Form PSC/TEL 43 (5/08) (entitled "Application Form for Authority to Provide Alternative Access Vendor Service within the State of Florida"). The application form may be obtained from the Commission's website at www.floridapsc.com/utilities/telecomm/ or the Division of Regulatory Analysis. A nonrefundable application fee of \$250.00 must accompany each application to cover processing costs. The Commission's acceptance of the application fee does not imply that the application for sale, assignment or transfer of a certificate will be granted.
- (2) An original and one copy of the application shall be filed with the Office of Commission Clerk.
- (3) An application for sale, assignment or transfer of a certificate will be granted if the Commission determines that such approval is in the public interest.
- (4) A certificate may be sold, assigned or transferred only as a whole.

Rulemaking Authority 350.127(2) FS. Law Implemented 364.32, 364.33, 364.335, 364.337, 364.345 FS. History—

New 1-8-95, Amended 1-5-06, 5-29-08, Repealed

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25-24.735 Cancellation of a Certificate.

- (1) The Commission may cancel an AAV service provider's certificate for any of the following reasons:
- (a) Violation of the terms and conditions under which the authority was originally granted;
- (b) Violation of Commission rules or orders:
- (c) Violation of Florida statutes; or
- (d) Failure to provide service for a period of 6 months.
- (2) If a certificated AAV service provider seeks to cancel its certificate, it shall request cancellation from the Commission in writing and shall provide the following information with its request:
- (a) The date the final Regulatory Assessment Fee was paid;
- (b) A statement of the reasons for cancellation;

(c) A statement on the treatment of customer deposits and final bills; and				
(d) A representative copy of a customer notice regarding discontinuance of service.				
Rulemaking Authority 350.127(2) FS. Law Implemented 350.113, 350.127(1), 364.285, 364.337, 364.345 FS.				
History–New 1-8-95, Repealed .				
25-24.745 Records and Reports; Rules Incorporated.				
(I) The following rules are incorporated herein by reference and apply to Alternative Access Vendor service				
companies:				
Section	Title			
25-4.019	Records and Reports in General			
25-4.020(2)	Location and Preservation of Records			
25-4.043	Response to Commission Staff Inquiries			
25-4.0161	Regulatory Assessment Fees; Telecommunications Companies			
(2) Each AAV service provider shall file with the Commission's Division of Competitive Markets and Enforcemen				
updated information for the following items within 10 days after any such change occurs:				
(a) Mailing address of the certificate holder; and				
(b) Name, title, and phone number of the individual responsible for Commission contacts.				
Rulemaking Authority 350.127(2) FS. Law Implemented 364.016, 364.17, 364.18, 364.183, 364.185, 364.337 FS.				
History-New 1-8-95, Amended 11-13-95, Repealed				
25-24.800 Scope.				
(1) This part applies only to Competitive Local Exchange Companies. The provisions of Chapter 25-4, 25-9 or 25-				
14, F.A.C., shall not apply to Competitive Local Exchange Companies, unless specifically provided by this part.				
(2) In addition to the rules contained in this part, any Competitive Local Exchange Company which provides				
operator services	in a call aggregator context shall also comply with the rules contained in Part XIII of Chapter 25-			

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Rulemaking Authority 350.127(2) FS. Law Implemented 364.01, 364.337 FS. History-New 12-27-95, Amended 2-1-
99, <u>Repealed</u> .
25-24.805 Certificate of Public Convenience and Necessity Required.
(1) No person shall provide competitive local exchange telecommunications service without first obtaining a
certificate of public convenience and necessity from the Commission. The certificate shall be for statewide
authority, unless precluded by Section 364.337(1), F.S., to provide all Commission approved telecommunications
services. Services may not be provided, nor may deposits or payment for services be collected, until the effective
date of a certificate. However, marketing and development activities may begin prior to the effective date of the
certificate at the applicant's risk that it 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) Any Alternative Access Vendor certificated prior to July 1, 1995, may become a Competitive Local Exchange
Company by filing with the Commission's Office of Commission Clerk a letter of intent to provide local exchange
service. An application fee is not required to be paid in conjunction with such filing. Authorization associated with
such letter of intent shall be effective January 1, 1996, or upon receipt by the Commission, whichever is later.
Competitive Access Vendors authorized pursuant to this section shall be subject to all rules applicable to
Competitive Local Exchange Telecommunications Companies.
Rulemaking Authority 350.127(2) FS. Law Implemented 364.01, 364.337 FS. History-New 12-27-95,
Repealed .
25-24.810 Application for Certificate.
(1) An applicant for a certificate shall submit an application on Form PSC/TEL-8 (5/08), which is incorporated into
this rule by reference. Form PSC/TEL 8 (5/08), entitled "Application Form for Authority to Provide Competitive
Local Exchange Service Within the State of Florida", may be obtained from the Commission's website at

25-24.820 Revocation of a Certificate.

www.floridapsc.com/utilities/telecomm/ or by contacting the Commission's Division of Regulatory Analysis. A non-refundable application fee of \$400.00 must accompany the filing of each application. (2) An original and one copy of the application shall be filed with the Office of Commission Clerk. Rulemaking Authority 350.127(2) FS. Law Implemented 364.335 FS. History-New 12-27-95, Amended 1-5-06, 5-29-08, <u>Repealed</u> 25-24.815 Application for Approval of Sale, Assignment or Transfer of Certificate. (1) A person obtaining a certificate by sale, assignment or transfer from the holder thereof shall submit jointly with the certificate holder an application on Form PSC/TEL 8 (5/08), which is incorporated into this rule by reference. Form PSC/TEL 8 (5/08), entitled "Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida", may be obtained from the Commission's website at www.floridapsc.com/utilities/telecomm/ or by contacting the Commission's Division of Regulatory Analysis. A non-refundable application fee of \$400.00 must accompany the filing of each application. (2) An original and one copy of the application shall be filed with the Office of Commission Clerk. (3) An application for sale, assignment or transfer of a certificate will be granted if the Commission determines that such approval is in the public interest. (4) A certificate may be sold, assigned or transferred only as a whole. (5) In the case of sale, assignment or transfer where the assignor and assignee or transferor or transferee are all currently certificated by the Commission and there are no pending actions against them, a sale, assignment or transfer shall be considered effective upon filing. Any party protesting the sale, assignment or transfer shall be required to prove why the sale, assignment or transfer is not in the public interest. Rulemaking Authority 350.127(2) FS. Law Implemented 364.335, 364.345(2) FS. History-New 12-27-95, Amended 1-5-06, 5-29-08, Repealed .

(1) The Commission may on its own motion, after notice and opportunity for hearing, revoke a company's
certificate for any of the following reasons:
(a) Violation of a term or condition under which the authority was originally granted;
(b) Violation of Commission rule or order;
(c) Violation of Florida Statute; or
(d) Violation of a price list standard.
(2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in
writing and shall provide the following with its request. Cancellation of a certificate shall be ordered subject to the
holder providing the required information.
(a) A statement of intent and date certain to pay regulatory assessment fee.
(b) A statement of why the certificate is proposed to be cancelled.
(c) A statement as to how customer deposits and final bills will be handled.
(d) Proof of individual customer notice regarding discontinuance of service.

Rulemaking Authority 350.127(2) FS. Law Implemented 364.345 FS. History-New 12-27-95, Repealed .