

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-

DATE: July 2, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *S.M.C.*
RE: Docket No. 20120230-PU

Please file the attached rule materials in the docket file listed above.

Thank you.

Attachment

RECEIVED--FPSC
2018 JUL -2 AM 10:40
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CLERK

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STATE OF FLORIDA



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

Public Service Commission

May 24, 2012

Joint Administrative Procedures Committee
Brian T. Moore, Chief Attorney
Room 680, Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1400

Re: Florida Public Service Commission Rule Chapter 25-4

Dear Mr. Moore:

I am in receipt of your letter dated May 4, 2012, in which you raised questions about four Commission rules in Chapter 25-4, Florida Administrative Code. You asked that I provide written responses to your questions, which follows. For ease of reference, I have restated each of your questions in bold type. Below each question is the answer.

25-4.004 This rule section, which has not been amended since it was adopted in 1968, provides that no one may construct or operate a telephone line or system without first obtaining "a certificate that the present or future public convenience and necessity require or will require" it. The rule implements section 364.33, Florida Statutes, which has been amended several times since 1968. In the past, it appears that this rule section did little more than paraphrase section 364.33. However, section 364.33 now provides:

A person may not provide telecommunications services to the public without a certificate of necessity or a certificate of authority. After July 1, 2011, the commission shall cease to issue certificates of necessity, but existing certificates of necessity remain valid. A certificate of necessity or authority may be transferred to the holder's parent company or an affiliate or another person holding a certificate of necessity or authority, its parent company, or an affiliate without prior approval of the commission by giving written notice of the transfer to the commission within 60 days after the completion of the transfer. The transferee assumes the rights and obligations conferred by the certificate. This section does not affect any obligation of the transferee pursuant to 47 U.S.C. ss. 251 and 252 and the Federal Communications Commission's orders and regulations implementing those sections.

It appears that the Legislature has removed the certificate of necessity requirement and replaced it with a certificate of authority. See also sec. 364.335, Fla. Stat. Accordingly, it would appear that rule section 25-4.004 should be repealed or substantially re-written. Please advise whether the Commission believes that it still has authority for this rule and whether it intends to repeal or amend it.

As you mentioned in your letter, the Commission has the authority under sections 364.33 and 364.335, Florida Statutes, to issue certificates of authority, and existing certificates of necessity remain valid. Commission staff intends to amend Rule 25-4.004 to conform to the changes to sections 364.33 and 364.335. Commission staff intends to initiate rulemaking to amend the rule by the end of June 2012.

25-4.005 The recent changes to section 364.33 and 364.335, Florida Statutes, also appear to affect this rule section. The Commission indicated in its Biennial Rule Review Report that it intended to repeal this rule, with rulemaking to be initiated in the first half of 2012. Please advise whether the Commission still intends to repeal this rule and, if so, when it intends to do so.

As addressed in the response to your prior question, the Commission has the authority under sections 364.33 and 364.335, Florida Statutes, to issue certificates of authority, and existing certificates of necessity remain valid. While section 364.33 sets forth certain circumstances when a certificate of necessity or authority may be transferred without prior Commission approval, all other transfers of certificates of authority are subject to section 364.335. Although the agency initially contemplated consolidating Rule 25-4.005 with Rule 25-4.004, it has been determined that the subject matter of Rule 25-4.005, concerning transfers of certificates, should be retained in a separate rule. Commission staff intends to rewrite Rule 25-4.005 to conform to the changes in sections 364.33 and 364.335. It is still our intent to initiate rulemaking in the first half of 2012, that is, by the end of June 2012.

25-4.0201 The Commission proposed amendments to this rule in the April 27, 2012, Florida Administrative Weekly, which appear to address recent statutory changes. Accordingly, questions about the amendments to section 364.183, Florida Statutes, and the issue of access to the records of affiliates need not be raised at this time.

As your letter states, the Commission has proposed amendments to this rule in the April 27, 2012, edition of the Florida Administrative Weekly.

25-4.043 This rule provides, "The necessary replies to inquires propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry." It has not been amended since it was adopted in 1968. The rule currently cites section 364.183, Florida Statutes, as the law implemented, but it is not clear just what is being implemented or what is meant by "the necessary replies."

The Commission's powers appeared to be broadly defined in 1968, but more specificity was added over the years. Section 364.183 did not even exist until 1982, and it does not appear that it was simply transferred from some other section in Chapter 364, Florida Statutes. Thus, while this rule may have been necessary in 1968 to implement section 364.17 or other statutory responsibilities, it is not clear how it implements section 364.183 now. Is it a reference to an access to records request pursuant to section 364.183(1)? Is it a reference to a discovery request pursuant to section 364.183(2), which has provided since 1990 that all discovery be conducted pursuant to Rule 1.280, Florida Rules of Civil Procedure? If the Commission believes that this rule remains necessary, please explain to what it applies and provide the statutory authority for it.

Upon review of this rule, Commission staff does not believe the rule remains necessary. Commission staff intends to initiate rulemaking to repeal the rule by the end of July 2012.

I hope this letter adequately addresses your questions. If you have any further questions, please feel free to contact me.

Sincerely,



S. Curtis Kiser
General Counsel

SCK:th

cc: Ronald A. Brisé, Chairman
Lisa Polak Edgar, Commissioner
Art Graham, Commissioner
Eduardo E. Balbis, Commissioner
Julie I. Brown, Commissioner
Mary Anne Helton
Braulio Baez
Charles Hill
Marshall Willis
Beth Salak
Samantha Cibula

MIKE HARIDOPOLOS
President

DEAN CANNON
Speaker



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May 4, 2012

Mr. S. Curtis Kiser
General Counsel
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



12 MAY - 8 AM 8:34

Re: Florida Public Service Commission Rule Chapter 25-4

Dear Mr. Kiser:

In addition to reviewing proposed rules, the Joint Administrative Procedures Committee is required to maintain a continuous review of all agency rules. See Joint Rules of the Florida Legislature 4.6 (2011). In fulfilling that obligation, we have reviewed several of the remaining rules in chapter 25-4, which address the Commission's regulation of telephone companies, and offer the following comments and questions for your written response:

25-4.004 This rule section, which has not been amended since it was adopted in 1968, provides that no one may construct or operate a telephone line or system without first obtaining "a certificate that the present or future public convenience and necessity require or will require" it. The rule implements section 364.33, Florida Statutes, which has been amended several times since 1968. In the past, it appears that this rule section did little more than paraphrase section 364.33. However, section 364.33 now provides:

A person may not provide telecommunications services to the public without a certificate of necessity or a certificate of authority. **After July 1, 2011, the commission shall cease to issue certificates of necessity**, but existing certificates of necessity remain valid. A certificate of necessity or authority may be transferred to the holder's parent company or an affiliate or another

person holding a certificate of necessity or authority, its parent company, or an affiliate without prior approval of the commission by giving written notice of the transfer to the commission within 60 days after the completion of the transfer. The transferee assumes the rights and obligations conferred by the certificate. This section does not affect any obligation of the transferee pursuant to 47 U.S.C. ss. 251 and 252 and the Federal Communications Commission's orders and regulations implementing those sections.

It appears that the Legislature has removed the certificate of necessity requirement and replaced it with a certificate of authority. See also sec. 364.335, Fla. Stat. Accordingly, it would appear that rule section 25-4.004 should be repealed or substantially re-written. Please advise whether the Commission believes that it still has authority for this rule and whether it intends to repeal or amend it.

25-4.005 The recent changes to section 364.33 and 364.335, Florida Statutes, also appear to affect this rule section. The Commission indicated in its Biennial Rule Review Report that it intended to repeal this rule, with rulemaking to be initiated in the first half of 2012. Please advise whether the Commission still intends to repeal this rule and, if so, when it intends to do so.

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Mr. S. Curtis Kiser
May 4, 2012
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If you have any questions or need me to elaborate further on any of the above, please let me know. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian T. Moore", with a long horizontal flourish extending to the right.

Brian T. Moore
Chief Attorney