

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed repeal of Rules) DOCKET NO. 951522-TS
25-4.0041, F.A.C., Provision of) ORDER NO. PSC-95-1615-NOR-TS
Shared Tenant Services for Hire,) ISSUED: December 29, 1995
and 25-24.557, F.A.C., Types of)
Shared Tenant Services)
Companies; and Proposed)
Amendment of Rules 25-24.555,)
F.A.C., and 25-24.560 through)
25-24.585, F.A.C., Relating to)
Shared Tenant Services.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to repeal Rules 25-4.0041, F.A.C., Provision of Shared Tenant Services for Hire and 25-24.557, F.A.C., Types of Shared Tenant Services Companies; and proposed amendment of Rules 25-24.555, F.A.C., and 25-24.560 through 25-24.585, F.A.C., Relating to Shared Tenant Services.

The attached Notice of Rulemaking will appear in the January 5, 1996 edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., April 10, 1996
Betty Easley Conference Center
Room 152, 4075 Esplanade Way
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rules must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 2540

DOCUMENT NUMBER-DATE

13106 DEC 29 95

FPSC-RECORDS/REPORTING

ORDER NO. PSC-95-1615-NOR-TS
DOCKET NO. 951522-TS
PAGE 2

Shumard Oak Blvd., Tallahassee, FL 32399-0870, no later than
January 26, 1996.

By ORDER of the Florida Public Service Commission, this 29th
day of December, 1995.

BLANCA S. BAYÓ, Director
Division of Records & Reporting

by: Kay Feun
Chief, Bureau of Records

(S E A L)

ORDER NO. PSC-95-1615-NOR-TS
DOCKET NO. 951522-TS
PAGE 3

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 951522-TS

RULE TITLE:

RULE NO.:

Provision of Shared Service for Hire

25-4.0041

PURPOSE AND EFFECT: The rule amendment codifies the Commission's jurisdiction under the revised Chapter 364.339, Florida Statutes. The rule which provides for the requirements for Shared Tenant Services (STS) for hire is repealed as it is no longer necessary.

SUMMARY: The repeal of the rule reflects the changes to section 364.339, Florida Statutes, which allows for competition in the STS markets.

RULEMAKING AUTHORITY: 350.127(2), 364.19, F.S.

LAW IMPLEMENTED: 364.02, 364.33, 364.335, 364.337, 364.339, 364.345, F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE HEARING: IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., April 10, 1996

PLACE: Room 152, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THIS RULE AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399.

THE FULL TEXT OF THE RULE IS:

CHAPTER 25-4

TELEPHONE COMPANIES

PART I GENERAL PROVISIONS

- 25-4.001 Authorization of Rules.
- 25-4.002 Application and Scope.
- 25-4.003 Definitions.
- 25-4.004 Certificates of Public Convenience and Necessity.
- ~~25-4.0041 Provision of Shared Service for Hire. (Repealed)~~
- 25-4.005 Transfer of Certificate of Public Convenience and Necessity As to All or Portion of Service Area.
- 25-4.006 Issuance of Certificate in the Event of Failure to Furnish Adequate Service.
- 25-4.007 Reference to Commission.
- 25-4.0041 Provision of Shared Service for Hire.**

~~(1) The provision for hire of shared telephone service within a local calling area by other than the certificated local exchange company is prohibited except in those cases in which the Commission determines that no duplicative or competitive local exchange service is being provided.~~

~~(2) The provision for hire of shared WATS Service shall be permitted only when the provider has been granted a certificate of public convenience and necessity by this Commission to do so.~~

~~(3) The foregoing notwithstanding, until July 1, 1987, any person who is providing shared telephone service, is sharing telephone service or who has placed orders for shared telephone service on or before November 4, 1985 may continue to receive that service. Persons affected by this rule shall be notified by the local exchange companies of the content of the rule within 30 days from the effective date of this rule.~~

Specific Authority: 350.127(2), 364.19, F.S.

Law Implemented: 364.02, 364.33, 364.335, 364.337, 364.339, 364.345, F.S.

History: New 12/22/85, Formerly 25-4.041, Amended 11/2/86, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULES: Julian O'Pry

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULE:
Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: December 19, 1995

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence

ORDER NO. PSC-95-1615-NOR-TS
DOCKET NO. 951522-TS
PAGE 6

forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (904) 413-6770 at least five calendar days prior to the hearing. If you are hearing or speech impaired, please contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

ORDER NO. PSC-95-1615-NOR-TS
DOCKET NO. 951522-TS
PAGE 7

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 951522-TS

RULE TITLE:	RULE NO.:
Scope and Waiver	25-24.555
Types of Shared Tenant Service Companies	25-24.557
Terms and Definitions	25-24.560
Certificate of Public Convenience and Necessity Required	25-24.565
Application for Certificate	25-24.567
Improper Use of a Certificate	25-24.568
Application for Approval of Sale , Assignment, or Transfer of Certificate	25-24.569
Cancellation of a Certificate	25-24.572
Shared Tenant Service Operations	25-24.575
Airport Exemption	25-24.580
Records and Reports; Rules Incorporated	25-24.585

PURPOSE AND EFFECT: The rule amendments codify the Commission's jurisdiction under the revised Chapter 364.339, Florida Statutes. The proposed rule changes reflect statutory changes, streamline the rules and make the Shared Tenant Service (STS) operating authority statewide and not limited to commercial customers or single buildings. The rules set the parameters for providers of Shared Tenant Services. The rules are necessary for the Commission to

ORDER NO. PSC-95-1615-NOR-TS
DOCKET NO. 951522-TS
PAGE 8

carry out its regulatory oversight of STS providers. Rules which are no longer necessary are repealed.

SUMMARY: The rules reflect the changes to section 364.339, Florida Statutes, which (1) requires certification of all STS providers; (2) Removes the commercial designation and single building restriction effective January 1, 1996, and allows service to residential tenants; (3) Requires that applicants have sufficient technical, financial, and managerial capabilities to provide shared tenant service; and (4) Allows service to be offered and priced differently to residential and commercial tenants if deemed to be in the public interest.

RULEMAKING AUTHORITY: 350.127(2), F.S.

LAW IMPLEMENTED: 350.113, 350.127(1), 364.03, 364.18, 364.32, 364.33, 364.185, 364.285, 364.335, 364.337, 364.339, 364.345, F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE HEARING: IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., April 10, 1996

PLACE: Room 152, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THIS RULE AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399.

THE FULL TEXT OF THE RULE IS:

PART XII SHARED TENANT SERVICES

25-24.555 Scope and Waiver.

~~25-24.557 Types of Shared Tenant Service Companies. (Repealed)~~

25-24.560 Terms and Definitions.

25-24.565 Certificate of Public Convenience and Necessity Required.

25-24.567 Application for Certificate.

25-24.568 Improper Use of a Certificate.

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

25-24.572 Cancellation of a Certificate.

25-24.575 Shared Tenant Service Operations.

25-24.580 Airport Exemption. (No changes)

25-24.585 Records and Reports; Rules Incorporated.

25-24.555 Scope and Waiver.

(1) This part applies to persons or companies ~~other than local exchange telecommunications companies~~ who provide for sharing share or resale of resell local exchange telecommunications service, as defined in 25-24.560(9), F.A.C. ~~As provided by Rules 25-4.002, 25-9.001, and 25-14.001, no provision of Chapters 25-4, 25-9, or 25-14 shall apply to shared or resold local exchange~~

~~telecommunications service except as provided by Rules 25-4.041 and this Part.~~

(2) No change.

(3) No change.

(4) A shared tenant service company may petition for a waiver of any provision of this part. The Commission may grant a waiver to the extent that it determines that it is in the public interest to do so. The Commission may grant the petition in whole or part and may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission shall consider:

(a) The factors enumerated in section 364.339(4~~3~~), Florida Statutes;

(b) The extent to which competitive forces may serve the same function as, or prevent the necessity for, the provision sought to be waived; and

(c) Alternative regulatory requirements for the company which may serve the purposes of this part.

(5) No change.

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

Law Implemented: 364.01, 364.339, F.S.

History: New 1/28/91, amended.

25-24.557 Types of Shared Tenant Service Companies.

~~(1) For purposes of this Part, shared tenant service provided through a key system with seven or more lines or a Private Branch Exchange (PBX) constitutes a major shared tenant service company. Shared tenant service provided through a key system or hybrid system with six or fewer lines is determined to be a minor shared tenant service company.~~

~~(2) A company desiring a status change from a major shared tenant service company to a minor shared tenant service company shall apply to the Commission for approval of said status change. A company whose status changes from a minor shared tenant service company to a major shared tenant service company shall first submit an application on Form PSC/CMU 37 (7/95), entitled "Application Form for Authority to Provide Shared Tenant Service," in accordance with Rule 25-24.567.~~

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

Law Implemented: 364.01, 364.339, F.S.

History: New 1/28/91, Repealed.

25-24.560 Terms and Definitions. For purposes of this Part, the following definitions apply:

~~(1) "Unaffiliated Entities" means those corporations, partnerships, proprietorships, or other groups that control less than 50 percent of the stock of the entity which claims to be affiliated.~~ "Alternative Access Vendor" (AAV) means any

telecommunications company, as defined in section 364.337(6)(a), Florida Statutes.

(2) "Agent" means one authorized to act on behalf of another.

(3) "Alternative local exchange telecommunications company" (ALEC) means any company as defined in Section 364.02(1), Florida Statutes.

~~(43)~~ "Company" means a shared tenant service company.

~~(54)~~ "Interexchange Company" (IXC) means any telecommunications company, as defined in section 364.02(~~67~~), Florida Statutes, which provides telecommunication service between exchange areas as those areas are described in the approved tariffs of individual local exchange companies.

~~(5) "Key System" means a multi line system in which the user can select a specific line for outgoing communications by pressing the button associated with that line on the phone.~~

(6) "Local Exchange Telecommunications Company" (LEC) means any telecommunications company, as defined in section 364.02(~~67~~), Florida Statutes, ~~which provides telecommunication service within exchange areas as those areas are described in the approved tariffs of the telecommunications company.~~

(7) "Local Service Area" or "Local Calling Area" means the area within which telecommunications service is furnished to subscribers under a specific schedule of exchange rates and within which calls may be completed without toll charges. A local service

area may include one or more exchange areas or portions of exchange areas.

(8) "Pay telephone service company" means any telecommunications company, as defined in section 364.02(67), Florida Statutes, other than a Local Exchange Company, which provides pay telephone service as defined in section 364.335(3), Florida Statutes.

~~(9) "Private Branch Exchange" or "PBX" means a system in which trunk lines connect a telephone company central office to a switching system which directs incoming calls to the appropriate user.~~

(910) "Shared tenant service" (STS) as defined in section 364.339(1), Florida Statutes, means the provision of service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to ~~commercial~~ tenants ~~within a single building~~ by an entity other than an existing local exchange telecommunications company.

(10) "Tenant" means any person entitled to occupy a premises under a rental or lease agreement.

~~(11) "Single building" means one structure under one roof.~~

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

Law Implemented: 364.33, 364.335, 364.339, F.S.

History: New 1/28/91, amended.

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, Shared Tenant Service providers with certificates granted prior to January 1, 1996, are authorized to provide shared tenant services statewide to tenants as defined in Section 25-24.560(9).

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

Law Implemented: 364.33, 364.335, 364.339, F.S.

History: New 1/28/91, amended.

25-24.567 Application for Certificate.

(1) An applicant desiring to provide shared tenant service shall submit an application on Commission Form PSC/CMU 37 (XX/95), which is incorporated into this rule by reference. Form PSC/CMU 37 (XX/95), entitled "Application Form for Authority to Provide Shared

Tenant Service," may be obtained by contacting the Commission's Division of Communications. A non-refundable ~~An~~ application fee of \$100.00 must accompany the filing of all applications. ~~This is a non-refundable fee to cover the costs of processing the application, and it has no relevance on the approval or denial of a certificate.~~

(2) An original and six ~~twelve (12)~~ copies of the application shall be filed with the Division of Records and Reporting.

(3) A certificate will be granted if the Commission determines that such approval is in the public interest.

(4) Any shared tenant service authority ~~previously granted or~~ granted hereafter is subject to the following:

(a) Shared tenant authority granted to all companies is on a statewide ~~location by location~~ basis and is restricted to ~~commercial~~ tenants as defined in Section 25-24.560(9). ~~in a single building.~~

(b) Each shared tenant service applicant shall ~~agree to~~:

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 alternative local exchange telecommunication, alternative access vendor, interexchange or pay telephone service. A separate application must be made for such authority.

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

Law Implemented: 364.33, 364.335, 364.339, 364.345, F.S.

History: New 1/28/91, Amended 5/8/91, 11/20/91, amended.

25-24.568 Improper Use of a Certificate. No certificate of public convenience and necessity authorizing shared tenant service may be ~~sold~~, assigned or transferred by the holder to another without prior Commission approval. No certificate shall be used as collateral for any purpose.

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

Law Implemented: 364.33, 364.335, 364.339, 364.345, F.S.

History: New 1/28/91, amended.

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/CMU 37 (XX/95), which is incorporated into this rule by reference. Form PSC/CMU 37 (XX/95) is entitled "Application Form for Authority to Provide Shared Tenant Service Within the State of

Florida." ~~and became effective January 28, 1991.~~ The application form may be obtained by contacting the Commission's Division of Communications.

(2) An original and six ~~twelve (12)~~ copies of the application shall be filed with the Division of Records and Reporting.

(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.

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

Law Implemented: 364.32, 364.33, 364.335, 364.337, 364.339, 364.345, F.S.

History: New 1/28/91, amended 11/20/91, _____.

25-24.572 Cancellation of a Certificate.

(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; ~~or~~

~~(d) Failure to provide service for a period of six (6) months.~~

(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 following information:

~~(a) The original certificate.~~

(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.

~~(3) Cancellation of a certificate shall be ordered subject to the holder providing the information required by Subsection (2).~~
Specific Authority: 350.127(2), F.S.

Law Implemented: 350.113, 350.127(1), 364.285, 364.339, 364.345, F.S.

History: New 1/28/91, amended.

25-24.575 Shared Tenant Service Operations.

(1) All shared tenant service providers shall allow the provider of last resort of local exchange telecommunication services ~~companies~~ direct access to tenants who desire local

service from the provider of last resort of local exchange telecommunication services ~~company~~ instead of the shared tenant service provider.

(2) Each shared tenant service provider shall allow ~~direct~~ access to local exchange company "zero" operators for emergencies and for line verification purposes. ~~toll service.~~

(3) Each shared tenant service provider shall allow ~~direct~~ access to 911 service where available.

(4) Each shared tenant service provider shall provide offer ~~unrestricted~~ access via 800, 10XXX or 950, where available, to all locally available interexchange companies.

~~(5) Where two (2) or more buildings are served by the same private branch exchange (PBX), the trunks serving each building shall be separately partitioned.~~

~~(6) Shared tenant service customers in one building shall not access or use the trunks partitioned for another building.~~

~~(7) Shared tenant service shall be provided to commercial tenants in a single building.~~

~~(8) Shared tenant service shall be limited to a total of 250 inward, outward and combinational trunks per private branch exchange (PBX).~~

~~(9) Shared tenant service providers shall not be allowed to:~~

~~(a) Provide shared WATS unless a separate certificate is granted pursuant to Rule 25-24.470.~~

~~(b) Establish dedicated facilities (provide lines) direct to an interexchange company's point of presence (POP).~~

~~(c) Construct facilities for interconnecting other shared tenant service locations.~~

~~(d) Allow intercommunication between unaffiliated commercial entities.~~

(510) The provider of last resort of local exchange telecommunication services LEC must be able to gain access to all facilities up to the demarcation point of the tenant's premises, and retain responsibility for provision and maintenance of the network up to that point.

(611) If the provider of last resort of local exchange telecommunication services LEC uses the STS provider's or the STS building owner's cable to gain access to the tenant, the provider of last resort of local exchange telecommunication services LEC shall be required to provide reasonable compensation. Such compensation shall not exceed the amount it would have cost the provider of last resort of local exchange telecommunication services LEC to serve the tenant through installation of its own cable. This cost must be calculated on a pro rata basis.

(712) In those circumstances where the STS provider and landlord of a building are not the same, the STS provider shall obtain and guarantee the permission of the building owner to allow direct access by the provider of last resort of local exchange

telecommunication services ~~LEC~~ to any tenant upon the tenant's request. This will be a condition of certification.

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

Law Implemented: 364.03, 364.035, 364.337, 364.339, 364.345, F.S.

History: New 1/28/91, amended _____.

25-24.585 Records and Reports; Rules Incorporated.

(1) The following rules are incorporated herein by reference and apply to shared tenant service companies:

SECTION	TITLE	PORTIONS NOT APPLICABLE
25-4.019	Records & Reports in General	<u>ALLNONE</u>
25-4.020	Location & Preservation of Records	<u>(2)NONE</u>
25-4.043	Inquiries	<u>ALLNONE</u>
25-4.0161	Regulatory Assessment Fees	<u>ALLNONE</u>

(2) No change.

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

Law Implemented: 350.113, 364.18, 364.185, 364.339, F.S.

History: New 1/28/91, amended 12/29/91, _____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Julian O'Pry.

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

ORDER NO. PSC-95-1615-NOR-TS
DOCKET NO. 951522-TS
PAGE 22

DATE PROPOSED RULE APPROVED: December 19, 1995

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (904) 413-6770 at least five calendar days prior to the hearing. If you are hearing or speech impaired, please contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).