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Public Service Commission

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COMMISSION
CLERK

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

DATE: October 6, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Cibula) *S.M.C. DES*
Division of Competitive Markets & Enforcement (Kennedy) *RK*
Division of Economic Regulation (Hewitt) *CBH*

RE: Docket No. 050591-TP – Proposed amendment of Rule 25-4.036, F.A.C., Design and Construction of Plant, and Rule 25-24.515, F.A.C., Pay Telephone Service.

AGENDA: 10/18/05 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050591.RCM.DOC

Case Background

As currently adopted, Rule 25-4.036, Florida Administrative Code (F.A.C.), Design and Construction of Plant, and Rule 25-24.515, F.A.C., Pay Telephone Service, require incumbent local exchange telecommunications companies (LECs) and pay telephone service companies (PATS), to design, construct, install, maintain, and operate their plants and facilities in accordance with the requirements of the National Electrical Code (NFPA 70-2002). Shared tenant service providers (STS), alternative access vendors (AAV), and competitive local exchange telecommunications companies (CLEC) must also comply with the requirements of the National Electrical Code (NFPA 70-2002) as Rule 25-4.036 is incorporated into Rule 25-24.585, F.A.C., Rules Incorporated; Rule 25-24.740, F.A.C., AAV Service Provider Operations; Rules Incorporated; and Rule 25-24.835, F.A.C., Rules Incorporated.

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Approximately every three years, the National Fire Protection Association (NFPA) revises the National Electrical Code and issues a new edition. As indicated above, Rules 25-4.036 and 25-24.515 currently reference the 2002 edition of the National Electrical Code. The most current version of the National Electrical Code, however, is the 2005 edition.

This rulemaking was initiated to amend Rules 25-4.036 and 25-24.515 to reflect the 2005 edition of the National Electrical Code (NFPA 70-2005). A Notice of Rule Development appeared in the May 20, 2005, edition of the Florida Administrative Weekly. The notice gave interested persons an opportunity to request a workshop to discuss the rule amendments. No workshop was requested, and none was held.

This recommendation addresses whether the Commission should amend the rules to reflect the most current edition of the National Electrical Code (NFPA 70-2005). The Commission has rulemaking authority pursuant to Sections 120.54, 350.127, 364.01, 364.03, 364.337, 364.3375, and 364.339, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-4.036, Florida Administrative Code, Design and Construction of Plant, and Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, to reflect the most current edition of the National Electrical Code, NFPA 70-2005?

Recommendation: Yes. Rule 25-4.036 and Rule 25-24.515 should be amended as set forth in Attachment A of this recommendation. (Cibula, Kennedy, Hewitt)

Staff Analysis: Pursuant to Sections 364.01, 364.03, 364.337, 364.3375, and 364.339, Florida Statutes, the Commission has the authority to ensure that the plants and facilities of telecommunications companies are designed and constructed in accordance with certain national standards. Currently, Rule 25-4.036 and Rule 25-24.515 require that the plant and facilities of LECs and PATS must be designed, constructed, installed, maintained, and operated in accordance with the provisions of the 2002 edition of the National Electrical Code. The most current edition of the National Electrical Code, however, is the 2005 edition. Staff is recommending that Rule 25-4.036 and Rule 25-24.515 be amended to reflect the 2005 edition of the National Electrical Code.

As stated in the case background, CLECs, STS, and AAVs will also be affected by the proposed rule amendments as Rule 25-4.036 is incorporated by reference into the rules governing these entities. Thus, the proposed amendments will benefit all Commission regulated telecommunications companies, and ultimately the public, by ensuring that the companies' systems are designed, constructed, installed, maintained, and operated in accordance with standards that minimize the chances of harm to persons and damage to properties.

It appears to staff that there are no monumental changes in the National Electrical Code that would have a dramatic impact on the companies. To illustrate, staff notes that the type of wire used for some installations has changed from the 2002 version due to different fire-rating requirements. Another example of a change from the 2002 version is that criteria have been added addressing communications cabling passing through air ducts. Staff received very few inquiries regarding the Notice of Rule Development and, as stated in the case background, no workshop on the proposed amendment to the rules was requested or held.

STATEMENT OF ESTIMATED REGULATORY COSTS

The Florida Administrative Procedure Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). The SERC prepared by staff, found at Attachment B, states that there should be no significant impact on the Commission, the industry, or small businesses, cities, or counties as a result of the rule amendments. The SERC also states that the Commission would benefit from the rule amendments as the rules will reflect the most current version of the National Electrical Code.

Based on the foregoing, staff recommends that the Commission propose the amendment of Rule 25-4.036 and Rule 25-24.515 as set forth in Attachment A of this recommendation.

Docket No. 050591-TP

Date: October 6, 2005

Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Cibula)

Staff Analysis: Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

1 **25-4.036 Design and Construction of Plant.**

2 (1) The plant and facilities of the utility shall be designed, constructed, installed,
3 maintained and operated in accordance with provisions ~~of the 2002 Edition~~ of the National
4 Electrical Safety Code (IEEE C2-2002) and the National Electrical Code (NFPA 70-2005~~70-~~
5 ~~2002~~), pertaining to the construction of telecommunications facilities.

6 (2) Compliance with these codes and accepted good practice is necessary to insure
7 as far as reasonably possible continuity of service, uniformity in the quality of service
8 furnished and the safety of persons and property.

9 Specific Authority 350.127(2) FS.

10 Law Implemented 364.01(4), 364.03 FS.

11 History—Revised 12-1-68, Amended 4-19-77, Formerly 25-4.36, Amended 2-5-86, 3-26-91, 5-
12 3-94, 12-23-02.

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1 **25-24.515 Pay Telephone Service.**

2 (1) For the purposes of this section, the term "direct free" shall mean without
3 requiring the use of a coin, paper money, credit card, or any other form of payment, even if the
4 payment will be returned.

5 (2) Pay telephone stations shall be lighted during the hours of darkness when light
6 from other sources is not adequate to read instructions and use the instrument.

7 (3) Each pay telephone station shall return any deposited amount if the call is not
8 completed, except messages to a Feature Group A access number.

9 (4) Each pay telephone station shall permit direct free access to the universal
10 telephone number "911" where operable.

11 (5) Each pay telephone station shall permit direct free access to dialtone.

12 (6) Each pay telephone station shall permit direct free access to toll free numbers
13 (e.g., 800, 877, and 888).

14 (7) Each pay telephone station shall complete calls to local and long distance
15 directory assistance.

16 (8) Each pay telephone station shall complete calls to the responsible party for
17 repairs or refunds by direct free access.

18 (9) Each pay telephone station shall be equipped with a legible sign, card, or plate
19 of reasonable permanence which shall identify the following:

20 (a) The telephone number and location address of the pay telephone station, name
21 and certificate number of the certificate holder, the party responsible for repairs and refunds,
22 address of responsible party, free phone number of responsible party, clear dialing instructions
23 (including notice of the lack of availability of local or toll services), and the local coin rate.

24 (b) For those pay telephone stations that will terminate conversation after a
25 minimum elapsed time, notice shall be included on the sign card as well as an audible

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1 announcement 30 seconds prior to termination of the phone call.

2 (10) Each pay telephone station that provides access to any interexchange company
3 shall provide coin free access, except for Feature Group A access, to all locally available
4 interexchange companies. The pay telephone station shall provide such access through the
5 forms of access purchased by locally available long distance carriers such as 10XXX+0,
6 10XXXX+0, 101XXXX+0, 950, toll free (e.g., 800, 877, and 888) access.

7 (11) No sales solicitation shall be allowed during the interval between the last digit
8 dialed by the end user and connection with the interexchange carrier.

9 (12) All 0- calls shall be routed to a telecommunications company that is authorized
10 by the Commission to handle 0- calls. All other calls, including operator service calls, may be
11 routed to the pay telephone provider's carrier of choice, unless the end user dials the
12 appropriate access code for their carrier of choice, i.e., 950, 10XXX, 10XXXX, 101XXXX,
13 and toll free access (e.g., 800, 877, and 888).

14 (13)(a) Each pay telephone station shall allow incoming calls to be received at all
15 times, with the exception of those located at hospitals, schools, and locations specifically
16 exempted by the Commission. There shall be no charge for receiving incoming calls.

17 (b) A pay telephone provider may petition the Commission for an exemption from
18 the incoming call requirement for a period that shall not exceed two years from the effective
19 date of the Order granting the exemption. Requests for exemption from the requirement that
20 each pay telephone station allow incoming calls shall be accompanied by a completed Form
21 PSC/CMP-2 (02/99), entitled "Request to Block Incoming Calls," which is incorporated into
22 this rule by reference and may be obtained from the Commission's Division of Competitive
23 Markets and Enforcement. The form requires an attestation from the owner of the pay
24 telephone, the owner of the pay telephone location, and the chief of the responsible law
25 enforcement agency that the request is sought in order to deter criminal activity facilitated by

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1 incoming calls being received at the specified pay telephone. A separate form shall be filed for
2 each telephone number for which an exemption is sought. The provider of the pay telephone
3 may request subsequent two-year exemptions by filing another Form PSC/CMP-2 (02/99).
4 Where incoming calls are not received, central-office based intercept shall be provided at no
5 charge to the end user and a written notice shall be prominently displayed on the instrument
6 directly above or below the telephone number which states: "Incoming calls blocked at request
7 of law enforcement."

8 (14) Each pay telephone station must be connected to an individual access line.

9 (15)(a) Each pay telephone service company shall permit outgoing calls to be placed
10 from its pay telephone stations at all times.

11 (b) Each pay telephone service company shall make all reasonable efforts to
12 minimize the extent and duration of interruptions of service. Service repair programs should
13 have as their objective the restoration of service on the same day that the interruption is
14 reported to the company. (Sundays and holidays excepted.)

15 (16)(a) Where there is a single pay telephone station, a directory shall be maintained at
16 each station. Where there are two or more pay telephone stations located in a group, a
17 directory for the entire local calling area shall be maintained at every other station. However,
18 where telephone pay stations are fully enclosed, a directory shall be maintained at each pay
19 telephone station. For purposes of this rule, the term "directory" shall mean both a current
20 white page directory for the local calling area and a reasonably current yellow page directory
21 that is appropriate for the calling area of the pay telephone station.

22 (b) Pay telephone stations that provide local directory assistance at no charge are
23 exempt from the provisions in paragraph (16)(a). A notice must appear on the placard if local
24 directory assistance at no charge is being provided.

25 (17) Normal maintenance and coin collection activity shall include a review of the

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1 cleanliness of each pay telephone station.

2 (18)(a) Except as provided in paragraphs (18)(b) below, each pay telephone station
3 shall conform to sections 4.1.3(17), 4.2.4, 4.2.5, 4.2.6, 4.5.1., 4.31.2, 4.31.3, and 4.31.5 of the
4 ADA Accessibility Guidelines for Buildings and Facilities, Appendix A to 28 CFR Part 36,
5 (July 1, 2003 Edition), which sections are incorporated by reference into this rule. This rule
6 does not apply to public text telephone and closed circuit telephones.

7 (b) Pay telephones shall not be installed where the required "clear floor or ground
8 space" provided for in ADA Accessibility Guidelines for Buildings and Facilities sections
9 4.2.4.1, 4.2.4.2, and 4.31.2 would be reduced by a vehicle parked in a designated parking
10 space.

11 (19) Each pay telephone station shall permit end users to input unlimited digits for
12 the duration of the call.

13 (20) Toll Fraud Liability.

14 (a) A company providing interexchange telecommunications services or local
15 exchange telecommunications services shall not collect from a pay telephone provider for
16 charges billed to a line for calls that originated from that line through the use of access codes
17 such as 10XXX, 10XXXX, 101XXXX, 950, and toll free (e.g., 800, 877, 888) access codes, or
18 when the call originating from that line otherwise reached an operator position, if the
19 originating line is subscribed to outgoing call screening and the call was placed after the
20 effective date of the outgoing call screening order.

21 (b) A company providing interexchange telecommunications services or local
22 exchange telecommunications services shall not collect from a pay telephone provider for
23 charges for collect or third number billed calls, if the line to which the call was billed was
24 subscribed to incoming call screening and the call was placed after the effective date of the
25 incoming call screening order.

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1 (c) Any calls billed through the provider of local exchange telecommunications
2 services or directly by an interexchange company, or through a billing agent, which have been
3 identified as not collectible as described in paragraphs (20)(a) and (b) above, must be removed
4 from any pay telephone provider's bill after the pay telephone provider gives notice of the
5 fraudulent charges to the billing party. Pay telephone providers shall give such notice to the
6 provider of local exchange telecommunications services and the interexchange company in
7 writing no later than the due date of the bill.

8 (d) The provider of local exchange telecommunications services is responsible for
9 charges described in paragraph (20)(c) that are associated with the failure of the provider of
10 local exchange telecommunications services' screening services.

11 (e) The interexchange company is responsible for charges described in paragraph
12 (20)(c) that are associated with the failure to properly validate calls via the appropriate
13 provider of local exchange telecommunications services' data base.

14 (f) Definitions: For purposes of subsection (20) the term "Effective Date" shall
15 mean the date after the call screening order was placed and associated charges apply.

16 (g) Any charges accrued to a line when the subscriber has subscribed to the
17 provider of local exchange telecommunications services to screen calls described in
18 paragraphs (20)(a) and (b) above shall not be the basis for discontinuance of local and
19 intrastate service.

20 (21) Providers serving confinement facilities shall provide for completion of all
21 inmate calls allowed by the confinement facility.

22 (22) Pay telephone stations located in confinement facilities shall be exempt from
23 the requirements of subsections (2), (4), (6), (7), (8), (10), (12), (13), (15), (16), and (19) of
24 this rule. Such pay telephone stations shall also be exempt from the requirements of subsection
25 (9), except that outgoing local and long distance calls may not be terminated until after a

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1 minimum elapsed time of ten minutes. Audible and written disconnect notifications shall
2 apply, and one access line shall not be connected to more than three pay telephone stations.

3 (23) Pay telephone facilities shall be designed, constructed, installed, maintained
4 and operated in accordance with provisions of the National Electrical Safety Code (IEEE C2-
5 2002) and the National Electrical Code (NFPA 70-2005~~NEPA 70-2002~~).

6 Specific Authority 350.127(2) FS.

7 Law Implemented 364.03, 364.035, 364.063, 364.337, 364.3375, 364.345 FS.

8 History—New 1-5-87, Amended 4-14-92, 12-21-92, 2-3-93, 10-10-94, 12-27-94, 9-5-95, 2-1-
9 99, 12-23-02, 4-5-05.

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

DATE: August 24, 2005
TO: Office of General Counsel (Cibula)
FROM: Division of Economic Regulation (Hewitt) *CBH CSR TJS*
RE: Statement of Estimated Regulatory Costs for Proposed Amendments to Rules 25-4.036, F.A.C., Design and Construction of Plant, and 25-24.515, F.A.C., Pay Telephone Service

SUMMARY OF THE RULE

Rules 25-4.036 and 25-24.515, F.A.C, require that the plant and facilities of regulated companies be designed, constructed, installed, maintained, and operated in accordance with provisions of the National Electrical Safety Code and the National Electrical Code. The proposed amendments would update the rules to the latest version of the Code.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND
GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

All regulated Florida telecommunications companies would potentially be affected by the proposed rule changes. There are 415 competitive local exchange companies, 10 incumbent local exchange companies, 30 shared tenant service companies, 423 pay telephone companies, 681 interexchange companies, and 37 alternative access vendors as of June 30, 2005, regulated by the Commission. If any are not in compliance, they would have to update their plant and facilities to meet the latest code requirements.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES
FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Commission would benefit by having the latest safety code in effect for regulated companies and their customers. There should be no impact on revenues for the Commission.

There should be no negative impact on other state and local government entities.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Regulated companies would have to comply with any changes from the previous version of the code. However, Commission staff has determined that the changes to the NEC are mainly cosmetic, renumbering paragraphs and moving items around. The only appreciable change was that previous designations for some of the wires used for communications can no longer be used in the future. These changes should be insignificant to the industry as far as costs are concerned.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be no significant impact on regulated small businesses, small cities, or small counties. The latest NEC is required by most, if not all, counties, cities, and state/federal communications works.

CH:kb

cc: Mary Andrews Bane
Chuck Hill
Ray Kennedy
Hurd Reeves