State of Florida

Division of Appeals
David E. Smith, Director
(904) 488-7464

Public Service Commission

October 10, 1990

ORIGINAL
FILE COPY

Mr. Carroll Webb
Joint Administrative Procedures
Committee
120 Holland Building
Tallahassee, Florida 32399

Re: DOCKET NO. 900644-TP, RULE 25-4.0161

Dear Mr. Webb:

Enclosed are the following materials concerning the above referenced proposed rule:

ACK ____
AFA ____
APP ____
CAF ____
CMU ____
CTR ____
EAG ____
LEG ____
LIN ____
OPC ____
RCH ____
SEC 1
WAS ____
OTH ____

1. A copy of the rule.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal comparison statement.
5. A statement of the impact of the rule on small business.
6. An economic impact statement.

If there are any questions with respect to this rule, please do not hesitate to call on me.

Sincerely,

Christiana T. Moore

CHRISTIANA T. MOORE
Associate General Counsel

CTM/cp
Enclosures
cc: Steve Tribble, Director,
Division of Records & Reporting
wI90644.cp

DOCUMENT NUMBER-DATE
09121 OCT 11 1990
FPSC-RECORDS/REPORTING

25-4.0161 Regulatory Assessment Fees; <u>Telecommunications</u> ~~Telephone~~ Companies.

(1) As applicable and as provided in s. 350.113, F.S. <u>s. 364.336, F.S., and s. 364.337(4), F.S.</u> ~~(1985)~~, each company shall remit a fee based upon its gross operating revenue <u>as provided below</u>~~.~~ This fee shall be referred to as a regulatory assessment fee, and each company shall pay a regulatory assessment fee in the amount of <u>.15</u> ~~one-eighth~~ of one percent of its gross operating revenues derived from intrastate business. <u>For the purpose of determining this fee, each interexchange telecommunications company and each pay telephone company shall deduct from gross operating revenues amounts paid for use of the local network to a telecommunications company providing local service.</u> Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee of <u>$50</u> ~~$25~~ shall be imposed.

(2) Regulatory assessment fees <u>and the applicable regulatory assessment fee return form</u> are due each January 30 for the preceding period or any part of the period from July 1 until December 31, and on July 30 for the preceding period or any part of the period from January 1 until June 30. <u>Commission Form PSC/CMU 25, entitled "Communication Company Regulatory Assessment Fee Return," applicable to local exchange telecommunications companies; Form PSC/CMU 26, entitled "Pay Telephone Service Provider Regulatory Assessment Fee Return;" Form PSC/CMU 34, entitled "Shared Tenant Service Provider Regulatory Assessment Fee Return;"</u>

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

and Form PSC/CMU 153, entitled "Interexchange Company Regulatory Assessment Fee Return," are incorporated into this rule by reference and may be obtained from the Commission's Division of Administration. Each company shall have up to and including the due date in which to submit the applicable form and:

(a) Remit the total amount of its fee, or

(b) Remit an amount which the company estimates is its full fee, or

(c) Seek and receive from the Commission a 30-day extension of its due date.

(3) Where the company remits less than its full fee pursuant to subsection (2)(b) of this rule, the remainder of the full fee shall be due on or before the 30th day from the due date and shall, where the amount remitted was less than 90 percent ~~%~~ of the total regulatory assessment fee, include interest as provided by subsection (5)(b) of this rule.

(4) Where a company receives a 30-day extension of its due date pursuant to subsection (2)(c) of this rule, then the company shall remit a charge in addition to the regulatory assessment fees, as set out in s. 350.113(5), F.S. ~~(1985)~~.

(5) The delinquency of any amount due to the Commission from the company pursuant to the provisions of s. 350.113, F.S., ~~(1985)~~ and this rule, begins with the first day after any date established as the due date either by operation of this rule or by an extension pursuant to this rule.

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

(a) A penalty, as set out in s. 350.113, F.S., ~~(1985)~~ shall apply to any such delinquent amounts.

(b) Interest at the rate of 12 percent ~~%~~ per annum shall apply to any such delinquent amounts.

Specific Authority: 350.127(2), 364.336, 364.337(4), F.S.

Law Implemented: 350.113, F.S.

History: New 5/18/83, formerly 25-4.161, Amended 10/16/86

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

FLORIDA PUBLIC SERVICE COMMISSION

Division of Appeals

DOCKET NO. 900644-TP

RULE TITLE: RULE NO.:

Regulatory Assessment Fees; 25-4.0161

Telecommunications Companies

PURPOSE AND EFFECT: To generate revenue sufficient to pay the cost of regulating telecommunications companies, the Commission proposes to increase the regulatory assessment fee rate from .125 (1/8) percent to .15 percent of telecommunications companies gross operating revenues derived from intrastate business.

The proposed rule amendment also increases the minimum annual regulatory assessment fee to $50 beginning in 1991, as required by section 364.336, Florida Statutes. The Commission also proposes to adopt a new regulatory assessment fee return form for each of the four types of telecommunications companies required to pay a regulatory assessment fee.

SUMMARY: The Commission proposes to amend Rule 25-4.0161, F.A.C., to increase the regulatory assessment fee rate that is paid by interexchange telecommunications companies, local exchange companies, pay telephone companies, and shared tenant service providers from .125 to .15 percent of their gross operating revenues derived from intrastate business. Interexchange companies and pay telephone companies would be allowed to deduct the amount they pay for use of the local network from their gross operating revenues before computing the regulatory assessment fee pursuant to s. 364.337(4), F.S., as amended by s. 34, Chapter 90-244, Laws of

Florida.

The proposed rule amendment also increases the minimum annual regulatory assessment fee to $50 beginning in 1991, as required by section 364.336, Florida Statutes. The Commission also proposes to adopt a new regulatory assessment fee return form for each of the four types of telecommunications companies required to pay a regulatory assessment fee.

RULEMAKING AUTHORITY: 350.127(2)

LAW IMPLEMENTED: 350.113

SUMMARY OF THE ESTIMATE OF ECONOMIC IMPACT OF THESE RULES: Telecommunications companies pay regulatory assessment fees as a percentage of their assessable gross operating revenues. The proposed rule amendment increases the percentage from .125 to .15 of one percent of gross revenues derived from intrastate business. By statute, each company must pay a minimum fee towards regulatory costs, however, even if profits are low or nonexistent. In 1989, 225 telecommunications companies paid the minimum fee. Approximately 825 companies owed the minimum fee but did not pay it.

Under the amended statute and proposed rule revision, small companies currently paying the minimum fee of $25 based on assessable revenues of up to $20,000 would pay a minimum fee of $50. Beginning October 1, 1990, however, pay telephone companies, are statutorily authorized to deduct the access fees they pay to local exchange companies before computing their regulatory assessment fees, so many of these companies may pay lower fees than in the past.

Based on the estimated level of telecommunications companies' assessable operating revenues for 1991 and 1992, the proposed increase in regulatory assessment fees will generate additional revenue of $1,138,057 for 1991 and $1,183,477 for 1992. The Commission will receive 92.7 percent of this amount, the state general revenue fund will receive 7 percent, and the remaining .3 percent will go to the Agency Budget Sunset Trust Fund. The actual projected cost to the companies will be less than these amounts because regulatory assessment fees are a tax deductible expense and payment of them reduces companies' taxable profits.

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 PROCEEDING. 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: 10:00 A.M., November 8, 1990

PLACE: Room 122, 101 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THESE RULES AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399

THE FULL TEXT OF THE RULE IS:

25-4.0161 Regulatory Assessment Fees; Telecommunications [Telephone] Companies.

(1) As applicable and as provided in s. 350.113, F.S. s. 364.336, F.S., and s. 364.337(4), F.S. [(1985)], each company shall remit a fee based upon its gross operating revenue as provided below. This fee shall be referred to as a regulatory assessment

fee, and each company shall pay a regulatory assessment fee in the amount of .15 [one-eighth] of one percent of its gross operating revenues derived from intrastate business. For the purpose of determining this fee, each interexchange telecommunications company and each pay telephone company shall deduct from gross operating revenues amounts paid for use of the local network to a telecommunications company providing local service. Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee of $50 [$25] shall be imposed.

(2) Regulatory assessment fees and the applicable regulatory assessment fee return form are due each January 30 for the preceding period or any part of the period from July 1 until December 31, and on July 30 for the preceding period or any part of the period from January 1 until June 30. Commission Form PSC/CMU 25, entitled "Communication Company Regulatory Assessment Fee Return," applicable to local exchange telecommunications companies; Form PSC/CMU 26, entitled "Pay Telephone Service Provider Regulatory Assessment Fee Return;" Form PSC/CMU 34, entitled "Shared Tenant Service Provider Regulatory Assessment Fee Return;" and Form PSC/CMU 153, entitled "Interexchange Company Regulatory Assessment Fee Return," are incorporated into this rule by reference and may be obtained from the Commission's Division of Administration. Each company shall have up to and including the due date in which to submit the applicable form and:

(a) Remit the total amount of its fee, or

(b) Remit an amount which the company estimates is its full fee, or

(c) Seek and receive from the Commission a 30-day extension of its due date.

(3) Where the company remits less than its full fee pursuant to subsection (2)(b) of this rule, the remainder of the full fee shall be due on or before the 30th day from the due date and shall, where the amount remitted was less than 90 percent [%] of the total regulatory assessment fee, include interest as provided by subsection (5)(b) of this rule.

(4) Where a company receives a 30-day extension of its due date pursuant to subsection (2)(c) of this rule, then the company shall remit a charge in addition to the regulatory assessment fees, as set out in s. 350.113(5), F.S. [(1985)].

(5) The delinquency of any amount due to the Commission from the company pursuant to the provisions of s. 350.113, F.S., [(1985)] and this rule, begins with the first day after any date established as the due date either by operation of this rule or by an extension pursuant to this rule.

(a) A penalty, as set out in s. 350.113, F.S., [(1985)] shall apply to any such delinquent amounts.

(b) Interest at the rate of 12 percent [%] per annum shall apply to any such delinquent amounts.

Specific Authority: 350.127(2), 364.336, 364.337(4), F.S.

Law Implemented: 350.113, F.S.

History: New 5/18/83, formerly 25-4.161, Amended 10/16/86,_________.

NAME OF PERSON ORIGINATING PROPOSED RULE: Chris Holman, Division of Communications.

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

DATE PROPOSED RULES APPROVED: October 2, 1990

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.

Rule 25-4.0161
Docket No. 900644-TP

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING RULE

Section 350.113, Florida Statutes, requires companies that are under the jurisdiction of the Commission to pay fees based on their gross operating revenues. These regulatory assessment fees are required, to the extent practicable, to be related to the cost of regulating the type of company. During the 1990 session, the legislature created section 364.336, Florida Statutes, effective October 1, 1990, and increased the maximum regulatory assessment fee rate for telecommunications companies to .25 (1/4) percent of each company's gross operating revenue derived from intrastate business. To generate revenue sufficient to pay the cost of regulating telecommunications companies, the Commission proposes to increase the rate charged from .125 (1/8) percent to .15 percent. This rate was derived from the projected Commission cost to regulate telecommunications companies and the projected gross operating revenues of the communications industry.

The Commission also proposes to amend Rule 25-4.0161, F.A.C., to increase the minimum annual regulatory assessment fee from $25 to $50 because a new statutory minimum was enacted by the legislature during the 1990 session. Section 364.337(4), Florida Statutes, was also amended to allow pay telephone companies to deduct the amount they pay for use of the local network from their gross operating revenues before computing the regulatory assessment fee and the proposed rule amendment is necessary to reflect this change in the statute.

Because of the statutory changes in the minimum fee and the allowable deductions, and because of the proposed change in the rate, new regulatory assessment fee return forms are proposed for each of the four types of telecommunications companies required to pay a regulatory assessment fee.

STATEMENT ON FEDERAL STANDARDS

There are no federal standards that affect or are affected by this rule amendment.

STATEMENT OF IMPACT ON SMALL BUSINESS

Many of the affected telecommunications companies, other than the local exchange companies and major interexchange companies, are small businesses as defined in Chapter 120, F.S. Small businesses pay regulatory assessment fees as a percentage of their assessable gross operating revenues although the smaller the company and its revenues, the smaller the amount paid. The proposed rule amendment increases the percentage from .125 to .15 of one percent of gross revenues derived from intrastate business. Each company must pay a minimum fee towards regulatory costs, however, even if profits are low or nonexistent. In 1989, 225 telecommunications companies paid the minimum fee. Approximately 825 companies owed the minimum fee but did not pay it.

Small companies currently paying the minimum fee of $25 based on assessable revenues of up to $20,000 would have to pay a minimum fee of $50. Pay telephone companies, however, are now statutorily authorized to deduct the access fees they pay to local exchange companies before computing their regulatory assessment fecs, so many of these companies may pay lower fees than in the past.

Section 350.113(3), F.S., requires the Commission to charge fees that are, to the extent practicable, related to the cost of regulation. To the extent that 1) a disproportionate amount of time and effort is required to regulate small businesses, 2) small companies' assessable revenues limit the amount of the fee that can be charged, and 3) the rate set by the Commission is below the statutory maximum, small companies benefit.

RECEIVED

SEP 1 8 1990

MEMORANDUM

September 17, 1990

SEP 1 7 1990

General Counsel's Office
Florida Public Service Commission

TO: DIVISION OF APPEALS (MOORE)

FROM: DIVISION OF RESEARCH (HEWITT) CBH JMD

SUBJECT: ECONOMIC IMPACT STATEMENT FOR DOCKET NO. 900644-TP, PROPOSED REVISION TO RULE 25-4.0161, FAC, REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES

SUMMARY OF THE RULE

Rule 25-4.0161, FAC, sets the regulatory assessment fee (RAF) and rates for telephone companies as applicable and as provided in Sections 350.113, 364.336, and 364.337(4), Florida Statutes. Currently, telephone companies must pay one-eighth of 1 percent (0.125 percent) of intrastate operating revenues as RAFs. But companies with $20,000 or less in operating revenues are required to pay a minimum annual fee of $25 toward regulatory costs. The regulatory fees collected are placed in the Regulatory Trust Fund (Fund) which provides funding for the Florida Public Service Commission (FPSC) and other legislatively designated programs.

Proposed rule changes include the following items. Reference to telephone companies in the rule would be changed to telecommunications companies to recognize the broader range of services offered. In order to maintain a positive cash balance in the Fund and fully cover the regulatory costs related to the telecommunications industry as required by statute, the proposed rule revision would raise the RAFs rate for telecommunications companies. The new statutory limit is one quarter of 1 percent (0.25 percent) for all telecommunications companies; however,

ATTACHMENT 3

0.15 percent of gross operating revenues should be sufficient to cover telecommunications regulatory costs for the next biennium and would be the new RAFs rate. A statutorily set minimum fee of $50 would be imposed for companies with $33,333 or less in annual operating revenues based on the proposed 0.15 percent RAF. Also, RAFs reporting forms would be incorporated by reference within the rule.

DIRECT COSTS TO THE AGENCY

The Commission should incur no new costs or workload due to adoption of the proposed rule revision. Only the amounts of regulatory assessment fees collected would change along with minor form changes, but this revision should engender no procedural changes. The additional fees collected would help ensure that the telecommunications industry pays its share of the cost of regulation. Referencing the reporting forms in the rule would give the Commission more flexibility in making minor changes to the forms in the future.

COSTS AND BENEFITS TO THOSE PARTIES DIRECTLY AFFECTED BY THE RULE

The directly affected parties would be telecommunications companies, their shareholders in the short run, and ratepayers in the long run. Until subsequent rate cases, increased RAFs would be absorbed by affected telecommunications companies as an additional expense and would decrease the level of net operating income. As the increased RAF expense is included in rates, ratepayers would pay the difference. Pay telephone service (PATS) providers would likely absorb the slight increase in RAFs indefinitely for two reasons. First, if PATS providers wanted to raise the cost of a local pay telephone call and sought an increase in the maximum charge, the increment would have to be a nickel since pay telephones do not accept pennies. Second, the increase in RAF per call would be less than two-hundreths of a cent.

Based on the proposed RAF rate change, telecommunications RAFs would increase by an additional $1,138,057 for 1991 and $1,183,477 for 1992. The increase is based on the estimated levels of assessable operating revenues for those years. But the amount is negligible when spread over $4.5 billion in gross revenues.

The actual projected burden of the increased rate on firms and their shareholders would be less than the funds received by the Commission. This is because the increase in fees would reduce taxable profits and RAFs would be a deductible expense. For example, for every $100 of increased RAFs, $34 less federal income taxes and $5.50 (after the $5,000 exclusion) less state income taxes would be incurred, offsetting the out-of-pocket cost for RAFs. Also, the Commission nets less than the RAFs paid because 7 percent must be paid into the state general revenue fund and an additional 0.3 percent is paid into the Sunset Trust Fund.

Offsetting the minor increase in RAFs would be benefits to ratepayers of no decline in the quality of Commission regulation of telecommunications companies.

IMPACT ON SMALL BUSINESSES

Many of the affected telecommunications companies, other than the local exchange companies (LECs) and major interexchange carriers (IXCs), are small businesses as referred to in Chapter 120, F.S. Small businesses pay RAFs as a percentage of their assessable gross operating revenues, where the smaller the company and its revenues, the smaller the amount paid. However, each company must pay a minimum fee of $25 towards regulatory costs even if profits are low or nonexistent. In 1989, 225 companies paid the minimum fee totaling $5,625 in fees. Approximately 825 additional firms owed the minimum fee but did not pay it. Under the proposed rule changes, the structure remains the same although the rate and minimum fee are increased from 0.125 of 1 percent (0.125 percent) of operating revenues to 0.15 of 1 percent (0.15 percent) of operating revenues and the statutorily mandated minimum fee increase from $25 to $50. Therefore, those small firms currently paying the minimum fee of $25 based on assessable revenues up to $20,000 would now have to pay a minimum fee of $50. However, PATs firms are now statutorily allowed to deduct access fees paid to LECs before figuring their RAFs, so many PATS may experience a decrease in RAFs.

According to Section 350.113(3), F.S., the Commission must, to the extent practicable, collect fees that are related to the cost of regulation. But, smaller company regulation may require the Commission to spend a disproportionate amount of time and effort and the assessed RAFs may not completely cover those costs. Therefore, small companies may benefit from the proposed rate which is lower than the statutorily authorized ceiling.

IMPACT ON COMPETITION

The proposed rule revision would affect telecommunications companies proportionally if they have revenues which generate RAFs greater than $50. Smaller companies qualifying for minimum fee payments would experience a statutorily mandated 100 percent increase from $25 to $50. Considering the many small companies which are IXCs or PATs, the minimum fee is not a barrier to entry and does not appear to be an intolerable burden. Rather, the PATs and IXCs are highly competitive as many firms enter and exit the industry each year due to factors other than regulatory assessment fees.

In the long term, as companies are able to pass higher RAFs on to ratepayers, higher marginal rates could theoretically encourage large business users to bypass regulated companies through private lines if possible. Private lines have been established in the past to decrease businesses' telecommunication expenses; but the extent that a slight fractional increase in RAFs would increase private lines and decrease regulated companies' revenues is indeterminable but likely negligible.

IMPACT ON EMPLOYMENT

There should be a negligible impact on employment from increasing the RAFs on telecommunications firms. The additional funds raised would be absorbed by firms and their shareholders in the short run. Ratepayers would eventually pay slightly higher rates in the long run. No measurable net gain or loss in total employment should occur.

METHODOLOGY

Discussions were held with FPSC staff concerning the potential impact of the proposed rule revision. Estimates of hypothetical fee increases, hypothetical rate of return effects, and projected and estimated revenues for 1991-1992 were provided by the FPSC Bureau of Fiscal Services and Division of Communications personnel in conjunction with the Division of Research. The proposed change in RAFs from 0.125 of 1 percent to 0.15 of 1 percent of assessable gross operating revenues was used to calculate the increase in fees. Standard microeconomic analysis was used to assess the overall impact of the proposed rule change.

CBH:jn/3752R