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Public Service Commission

April 20, 2012

Kenneth J. Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

RE: Docket No. 120050-TP; Rules 25-4.020, 25-4.0201, F.A.C.

Dear Mr. Plante:

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

1. A copy of the proposed rules.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rules.
4. A federal standards statement.
5. Statement of Estimated Regulatory Costs for the rules.

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Mr. Kenneth J. Plante
April 20, 2012
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If there are any questions with respect to these rules, please do not hesitate to call me at 413-6224.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosanne Gervasi".

Rosanne Gervasi
Senior Attorney

Enclosures

cc: Office of Commission Clerk

1 **25-4.020 Location and Preservation of Records.**

2 (1) Any company that keeps its records outside the State shall reimburse the Commission for
3 the reasonable travel expense incurred by each Commission representative during any review
4 of the out-of-state records of the company or its affiliates. Reasonable travel expenses are
5 those travel expenses that are equivalent to travel expenses paid by the Commission in the
6 ordinary course of its business.

7 (a) The company shall remit reimbursement for out-of-state travel expenses within 30 days
8 from the date the Commission mails the invoice.

9 (b) The reimbursement requirement in subsection (1) shall be waived for any company that
10 makes its out-of-state records available at the company's office located in Florida or at another
11 mutually agreed upon location in Florida within 10 working days from the Commission's
12 initial request. If 10 working days is not reasonable because of the complexity and nature of
13 the issues involved or the volume and type of material requested, the Commission may
14 establish a different time frame for the company to bring records into the state. For individual
15 data requests made during an audit, the response time frame established in Rule 25-4.0201,
16 F.A.C., shall control. All records that a company is required to keep, by reason of these or
17 other rules prescribed by the Commission, shall be kept at the office or offices of the company
18 within the State unless otherwise authorized by the Commission.

19 (2) During any audit or review of records, the company shall provide Commission staff with
20 adequate and comfortable working and filing space, consistent with the prevailing conditions
21 and climate, and comparable with the accommodations provided the company's outside
22 auditors. Any company that keeps its records outside the State shall reimburse the
23 Commission for the reasonable travel expense incurred by each Commission representative
24 during any review of the out-of-state records of the company or its affiliates. Reasonable
25 travel expenses are those travel expenses that are equivalent to travel expenses paid by the

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

1 ~~Commission in the ordinary course of its business.~~

2 ~~(a) The company shall remit reimbursement for out-of-state travel expenses within 30 days~~

3 ~~from the date the Commission mails the invoice.~~

4 ~~(b) The reimbursement requirement in subsection (2) shall be waived:~~

5 ~~1. For any company that makes its out-of-state records available at the company's office~~

6 ~~located in Florida or at another mutually agreed upon location in Florida within 10 working~~

7 ~~days from the Commission's initial request. If 10 working days is not reasonable because of~~

8 ~~the complexity and nature of the issues involved or the volume and type of material requested,~~

9 ~~the Commission may establish a different time frame for the company to bring records into the~~

10 ~~state. For individual data requests made during an audit, the response time frame established~~

11 ~~in Rule 25-4.0201, F.A.C., shall control; or~~

12 ~~2. For a company whose records are located within 50 miles of the Florida state line.~~

13 ~~(3) All records shall be preserved for the period of time specified in Form PSC/ECR/17-T~~

14 ~~(5/93), entitled "Schedule of Records and Periods of Retention" which is incorporated by~~

15 ~~reference into this rule, and may be obtained from the Director, Division of Economic~~

16 ~~Regulation, Florida Public Service Commission.~~

17 ~~(a) However, all source documents retained as required by subsection 25-4.020(3), F.A.C.,~~

18 ~~shall be maintained in their original form for a minimum of three years, or for any lesser~~

19 ~~period of time specified for that type of record in Form PSC/ECR/17-T, after the date the~~

20 ~~document was created or received by the company. This paragraph does not require the~~

21 ~~company to create paper copies of documents where the company would not otherwise do so~~

22 ~~in the ordinary course of its business. The Commission may waive the requirement that~~

23 ~~documents be retained in their original form upon a showing by a company that it employs a~~

24 ~~storage and retrieval system that consistently produces clear, readable copies that are~~

25 ~~substantially equivalent to the originals, and clearly reproduces handwritten notations on~~

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1 documents.
2 ~~(b) The company shall maintain written procedures governing the conversion of source~~
3 ~~documents to a storage and retrieval system, which procedures ensure the authenticity of~~
4 ~~documents and the completeness of records. Records maintained in the storage and retrieval~~
5 ~~system must be easy to search and easy to read.~~

6 ~~(4) During any audit or review of records, the company shall provide Commission staff with~~
7 ~~adequate and comfortable working and filing space, consistent with the prevailing conditions~~
8 ~~and climate, and comparable with the accommodations provided the company's outside~~
9 ~~auditors.~~

10 *Rulemaking Authority 350.127(2), 364.016, ~~364.17, 364.18, 364.183, 364.185~~ FS. Law*
11 *Implemented 364.016, ~~364.17, 364.18, 364.183, 364.185~~ FS. History—Revised 12-1-68,*
12 *Amended 3-31-76, Formerly 25-4.20, Amended 6-23-93, 11-13-95, 1-25-09, XX-XX-XX*

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1 **25-4.0201 Audit Access to Records.**

2 This rule addresses the reasonable access to company utility ~~and affiliate~~ records provided by
3 Section 364.183(1), F.S., for the purposes of management and financial audits.

4 (1) The audit scope, audit program and objectives, and audit requests are not constrained by
5 relevancy standards narrower than those provided by Section 364.183(1), F.S.

6 (2) Reasonable access means that company responses to audit requests for access to records
7 shall be fully provided within the time frame established by the auditor. In establishing a due
8 date, the auditor shall consider the location of the records, the volume of information
9 requested, the number of pending requests, the amount of independent analysis required, and
10 reasonable time for the company utility to review its response for possible claims of
11 confidentiality or privilege.

12 (3) In those instances where the company utility disagrees with the auditor's assessment of a
13 reasonable response time to the request, the company utility shall first attempt to discuss the
14 disagreement with the auditor and reach an acceptable revised date. If agreement cannot be
15 reached, the company utility shall discuss the issue with successive levels of supervisors at the
16 Commission until an agreement is reached. If necessary, a final decision shall be made by the
17 Prehearing Officer. If the audit is related to an undocketed case, the Chairman shall make the
18 decision.

19 (4) The company utility ~~and its affiliates~~ shall have the opportunity to safeguard ~~its~~ their
20 records by copying them or logging them out, provided, however, that safeguard measures
21 shall not be used to prevent reasonable access by Commission auditors to company utility ~~or~~
22 ~~affiliate~~ records.

23 (5) Reasonable access to records includes reasonable access to personnel to obtain testimonial
24 evidence in response to inquiries or through interviews.

25 (6) Nothing in this rule shall preclude Commission auditors from making copies or taking

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1 notes. In the event these notes relate to documents for which the company has asserted
2 confidential status, such notes shall also be given confidential status.
3 (7) Form PSC/APA 6 (2/95), entitled "Audit Document and Record Request/Notice of Intent"
4 is incorporated by reference into this rule. This form is used by auditors when requests are
5 formalized. This form documents audit requests, the due dates for responses, and all Notices
6 of Intent to Seek Confidential Classification.
7 *Rulemaking Authority 350.127(2) FS. Law Implemented 364.183(1) FS. History—New 3-1-95,*
8 *Amended XX-XX-XX.*

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Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NO: RULE TITLE:

25-4.020 Location and Preservation of Records.

25-4.0201 Audit Access to Records

PURPOSE AND EFFECT: Rule 25-4.020 would be amended to eliminate requirements for preservation of records for telecommunications companies. In addition, there would no longer be a waiver from the requirement for telecommunications companies to reimburse the Commission for travel when the records are located within 50 miles of the Florida state line. Rule 25-4.0201 would be amended to no longer require Commission access to a telecommunications company's affiliate company records. Also the word utility is changed to company.

Docket No.: 120050-TP

SUMMARY: Rule 25-4.020 currently requires telecommunications companies to preserve their records for the period of time specified in Form PSC/ECR/17-T (5/93), and to keep their records at their offices within the State unless otherwise authorized by the Commission. The rule amendment would eliminate these requirements. The rule amendment would also eliminate the waiver of the reimbursement requirement for reasonable travel expenses incurred during a Commission review of out-of-state records that are located within 50 miles of the Florida state line. Rule 25-4.0201 currently requires Commission access to telecommunications company and affiliate company records. The rule amendment would no longer require Commission access to affiliate company records.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: A SERC has been prepared by the agency. Based on the SERC, the agency has determined that these rule amendments will not have an adverse impact on small businesses, will not likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after implementation of the rules, and will not require legislative ratification pursuant to s. 120.541(3), F.S. Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 350.127(2), 364.016, 364.183 FS

LAW IMPLEMENTED: 364.016, 364.183, 364.183(1) FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rosanne Gervasi, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6224, rgervasi@psc.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

25-4.020 Location and Preservation of Records.

~~(1) All records that a company is required to keep, by reason of these or other rules prescribed by the Commission, shall be kept at the office or offices of the company within the State unless otherwise authorized by the Commission.~~

Paragraph (2) renumbered to Paragraph (1).

Subparagraph (1)(a) (renumbered) – no change.

(b) The reimbursement requirement in subsection ~~(12)~~ shall be waived:

~~1. For any company that makes its out-of-state records available at the company's office located in Florida or at another mutually agreed upon location in Florida within 10 working days from the Commission's initial request. If 10 working days is not reasonable because of the complexity and nature of the issues involved or the volume and type of material requested, the Commission may establish a different time frame for the company to bring records into the state. For individual data requests made during an audit, the response time frame established in Rule 25-4.0201, F.A.C., shall control; or,~~

~~2. For a company whose records are located within 50 miles of the Florida state line.~~

~~(3) All records shall be preserved for the period of time specified in Form PSC/ECR/17-T (5/93), entitled "Schedule of Records and Periods of Retention" which is incorporated by reference into this rule, and may be obtained from the Director, Division of Economic Regulation, Florida Public Service Commission.~~

~~(a) However, all source documents retained as required by subsection 25-4.020(3), F.A.C., shall be maintained in their original form for a minimum of three years, or for any lesser period of time specified for that type of record in Form PSC/ECR/17-T, after the date the document was created or received by the company. This paragraph does not require the company to create paper copies of documents where the company would not otherwise do so in the ordinary course of its business. The Commission may waive the requirement that documents be retained in their original form upon a showing by a company that it employs a storage and retrieval system that consistently produces clear, readable copies that are substantially equivalent to the originals, and clearly reproduces handwritten notations on documents.~~

~~(b) The company shall maintain written procedures governing the conversion of source documents to a storage and retrieval system, which procedures ensure the authenticity of documents and the completeness of records. Records maintained in the storage and retrieval system must be easy to search and easy to read. Paragraph (4) renumbered to Paragraph (2).~~

Rulemaking Authority 350.127(2), 364.016, ~~364.17, 364.18, 364.183, 364.185~~ FS. Law Implemented 364.016, ~~364.17, 364.18, 364.183, 364.185~~ FS. History—Revised 12-1-68, Amended 3-31-76, Formerly 25-4.20, Amended 6-23-93, 11-13-95, 1-25-09, _____.

25-4.0201 Audit Access to Records.

This rule addresses the reasonable access to company utility and affiliate records provided by Section 364.183(1), F.S., for the purposes of management and financial audits.

Paragraph (1) – no change.

(2) Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the company utility to review its response for possible claims of confidentiality or privilege.

(3) In those instances where the company utility disagrees with the auditor's assessment of a reasonable response time to the request, the company utility shall first attempt to discuss the disagreement with the auditor and reach an acceptable revised date. If agreement cannot be reached, the company utility shall discuss the issue with successive levels of supervisors at the Commission until an agreement is reached. If necessary, a final decision shall be made by the Prehearing Officer. If the audit is related to an undocketed case, the Chairman shall make the decision.

(4) The company utility and its affiliates shall have the opportunity to safeguard its ~~their~~ records by copying them or logging them out, provided, however, that safeguard measures shall not be used to prevent reasonable access by Commission auditors to company utility or affiliate records.

Paragraphs (5)-(7) – no change.

Rulemaking Authority 350.127(2) FS. Law Implemented 364.183(1) FS. History—New 3-1-95, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dale Mailhot

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 27, 2012
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 37, No. 43,
October 28, 2011; Vol. 38, No. 14, April 6, 2012

STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULES

With the advent of electronic communications and the requirement for telecommunications companies to reimburse the Commission for reasonable travel expenses incurred during any review of out-of-state records under Rule 25-4.020(2), F.A.C., it is no longer necessary for the Commission to require those companies to keep their records at their offices within the state unless otherwise authorized by the Commission pursuant to Rule 25-4.020(1), F.A.C.

Rule 25-4.020(1)(b)2., F.A.C., waives the requirement for a company to reimburse the Commission for reasonable travel expenses incurred during a Commission review of a company's records that are located within 50 miles of the state line. That rule provision is obsolete, as it has not been utilized by a company since 1997 (when an Alabama company was acquired by a larger telecommunications company and its records were relocated within the state).

Due to improved technology, the records preservation requirements of Rule 25-4.020(3), F.A.C., are no longer necessary.

The 2011 Legislature eliminated from section 364.183(1), F.S., the Commission's authority to access the records of telecommunications company affiliates. Rule 25-4.0201, F.A.C., is being amended accordingly. Moreover, all references to "utility" are being changed to "company" within the rule, in keeping with the statutory references to telecommunications companies contained in section 364.183, F.S.

STATEMENT ON FEDERAL STANDARDS

There are no federal standards for these rules.

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: March 14, 2012
TO: Rosanne Gervasi, Senior Attorney, Office of the General Counsel
FROM: William B. McNulty, Economic Analyst, Division of Economic Regulation
RE: Statement of Estimated Regulatory Costs for Proposed Rule Amendments to Rule 25-4.020, F.A.C., Location and Preservation of Records, and Rule 25-4.0201, F.A.C., Audit Access to Records

Summary of Rules

Rule 25-4.020, Florida Administrative Code (F.A.C), Location and Preservation of Records, requires incumbent local exchange companies to keep all required records at its offices within the State of Florida, except in cases where the Commission authorizes records to be kept at locations outside the state. Telecommunications companies are required to reimburse the Commission for reasonable travel expenses associated with out-of-state Commission review of records, but the reimbursement requirement is waived if the company provides the information at a mutually agreeable location in Florida within 10 working days of the Commission's initial request or if the records are located within 50 miles of the Florida state line. The rule also specifies that incumbent local exchange company records shall be retained for a period of time identified in Form PSC/ECR/17-T (5/93), entitled "Schedule of Records and Periods of Retention." The draft rule would eliminate the required time-specific retention of records referenced in Form PSC/ECR/17-T(5/93). Also, the draft rule would also eliminate the waiver of the reimbursement requirement for telecommunications companies whose records are located within 50 miles of the Florida state line.

Rule 25-4.0201, F.A.C., Audit Access to Records, requires incumbent local exchange companies to allow reasonable access to utility and affiliate records for purposes of management and financial audits. The draft rule would eliminate required access to affiliate records. Also, the draft rule proposes to change all references to the term "utility" to "company".

Economic Analysis Showing Whether the Rules Are Likely to Have an Adverse Impact on Either Economic Growth or Business Competitiveness In Excess of \$1 Million Within 5 Years.

Subparagraph 120.541(2)(a)1, Florida Statutes (F.S.), requires an economic analysis showing whether the draft rule directly or indirectly is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Similarly, Subparagraph 120.541(2)(a)2, F.S., requires an economic analysis showing whether

the draft rule directly or indirectly is likely to have an adverse impact on business competitiveness in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Since the intent of the draft change to Rule 25-4.020, F.A.C, is to eliminate the time frame for the preservation of records by incumbent local exchange companies, this proposed reduction in regulatory requirements is not expected to adversely impact economic growth, private job sector employment, private sector investment, and business competitiveness during the five year period identified in the statute.

While the rule's waiver language regarding telecommunications companies' reimbursement for records located within 50 miles of the Florida state line would be eliminated with the proposed rule change, there is no statutory requirement for the waiver and no companies are expected to be affected by the proposed change. The rule waiver has benefitted such companies as Florala Telephone Company, Inc. (Florala) and Southland Telephone Company, two Alabama companies which kept their records within 50 miles of the state line. Florala was acquired in September 1997 by GTC, Inc. d/b/a Fairpoint Communications and its records have been relocated. Southland Telephone Company was acquired and moved its records in the early 1990's. No record reviews of local exchange companies by the Commission have taken place within the geographic zone in question since the acquisition of Florala. On the other hand, the waiver language contained in Rule 25-4.020(2)(b)1, F.A.C., allowing companies to make out-of-state records available within 10 working days from the Commission's request at an in-state location is commonly used.

The draft rule change to Rule 25-4.0201, F.A.C., to eliminate required access to affiliate records represents a lower level of regulatory requirement. For this reason, it is not expected to adversely impact economic growth, private job sector employment, private sector investment, and business competitiveness during the five year period identified in the statute.

Economic Analysis Showing Whether the Rules Are Likely to Increase Regulatory Costs In Excess of \$1 Million Within 5 Years

Subparagraph 120.541(2)(a)3, F.S., requires an economic analysis showing whether the draft rule directly or indirectly is likely to increase regulatory cost, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Since the intent of both Rule 25-4.020, F.A.C., and Rule 25-4.0201, F.A.C., is to decrease regulatory requirements, regulatory costs should likewise decrease.

Estimated Number of Entities Required to Comply and General Description of Individuals Affected

Subparagraph 120.541.(2)(b), F.S., requires a good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals anticipated to be affected by the rule. The number of telecommunications companies which are required to comply with subsections (1), (3), and (4) of Rule 25-4.020, F.A.C., includes 10 incumbent local exchange companies. Subsection (1) addresses location of records, subsection (3) addresses time period for the preservation of records, and subsection (4) addresses adequate accommodations during audits. The number of

telecommunications companies that are required to comply with subsection (2) of Rule 25-4.020, F.A.C., includes 436 companies (comprised of 305 local exchange companies, 95 pay telephone companies, 20 shared tenant service providers, and 16 alternate access vendors). Subsection (2) addresses reimbursement of state travel expenses. The number of telecommunications companies which are required to comply with the Rule 25-4.0201, F.A.C., includes 10 incumbent local exchange companies.

Rule Implementation and Enforcement Costs and Impact on Revenues For The Agency and Other State and Local Government Entities

Section 120.541(2)(c), F.S., requires a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues. Since draft changes to Rule 25-4.020(3), F.A.C., would remove the currently required preservation of a wide range of specified records, there is not expected to be any cost to the Commission of implementing and enforcing the draft rule change. There would be no impact on revenues to the Commission or other state and local government entities. Draft changes to Rule 25-4.0201, F.A.C. would not impact the cost or revenue to the Commission since audits of affiliate records are non-existent today and would remain so under the proposed rule.

Estimated Transactional Costs to Individuals and Entities

Section 120.541(2)(d), F.S., requires a good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. The likely impact of the draft rule changes on incumbent local exchange companies is a reduction in regulatory costs. Regarding Rule 25-4.020(3), F.A.C., the companies will incur lower costs for record retention since many required documents will no longer have to be maintained for the time periods established by reference in the current rule. The draft changes to Rule 25-4.020(2) are expected to have no impact on any telecommunications companies. Regarding Rule 25-4.0201, F.A.C., the incumbent local exchange companies are not likely to have a significant change in costs incurred to accommodate Commission access to affiliate records since Commission auditors have not requested an audit of affiliate records for many years.

It is not known whether companies' lower costs associated with record retention under the proposed changes to Rule 25-4.020(3), F.A.C., would be flowed through, in whole or in part, to consumers, including individuals and local government entities. Draft changes to Rule 25-4.0201, F.A.C., would not impact the transactional costs to individuals or local government entities since audits of affiliate records are non-existent today and would remain so under the proposed rule.

Impact On Small Businesses, Small Cities, Or Small Counties

Section 120.541(2)(e), F.S., requires an analysis of the impact of the proposed changes on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined in Section 120.52, F.S. In the event incumbent local

exchange companies' lower costs associated with record retention under the proposed changes to Rule 25-4.020, F.A.C., are flowed through, in whole or in part, to small businesses, small cities, and small counties, in the form of lower rates, those entities would be benefitted. Draft changes to Rule 25-4.0201, F.A.C. would have no impact on small businesses, small cities, or small counties.

Additional Information Deemed Useful By The Agency

None.

cc: Braulio Baez
Beth Salak
Dale Mailhot
Marshall Willis