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Timolyn Henry

From: McPike, Jessica L [EQ] [Jessica.L.Mcpike@embarq.com]
Sent: Monday, December 11, 2006 4:25 PM
To: Filings@psc.state.fl.us
Cc: Masterton, Susan S [EQ]
Subject: Docket #060644-TL Embarq's Supp Responses to the Competitive Carriers of the South's 1st Set of ROG's and 1st Request for POD's
Attachments: Rsp to CompSouth's Motion to Compel & Notice Supp Rsp to ComSouth's 1st ROG's & POD (4).pdf

Filed on Behalf of: **Susan S. Masterton**

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Docket No. **060644-TL**

Title of filing: **Notice of Service of Embarq Florida, Inc,'s Responses to Competitive Carrier's First Motion to Compel and Supplemental Responses to the Competitive Carriers of the South's First Set of Interrogatories (NOS. 1-2) and First Request for Production of Documents (NO. 2).**

Filed on behalf of: **Susan Masterton**

No of pages:

Description: **Notice of Service of Embarq Florida, Inc,'s Responses to Competitive Carrier's First Motion to Compel and Supplemental Responses to the Competitive Carriers of the South's First Set of Interrogatories (NOS. 1-2) and First Request for Production of Documents (NO. 2).**

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OTH _____

<<Rsp to CompSouth's Motion to Compel & Notice Supp Rsp to ComSouth's 1st ROG's & POD (4).pdf>>
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December 11, 2006

Ms. Blanca Bayó, Director
Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 060644-TL, Embarq Florida, Inc.'s Supplemental Responses to the Competitive Carriers of the South's First Set of Interrogatories (NOS. 1-2) and First Request for Production of Documents (NO. 2).

Dear Ms. Bayó:

Enclosed for filing on behalf of Embarq Florida, Inc. is Response to Competitive Carriers of the South's First Motion to Compel. Also, included is Notice of Service of Embarq's Supplemental Responses to the Competitive Carriers of the South's First Set of Interrogatories (NOS. 1-2) and Request for Production of Documents (NO. 2).

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850/599-1560.

Sincerely,

Susan S. Masterton

Enclosure

Susan S. Masterton
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**CERTIFICATE OF SERVICE
DOCKET NO. 060644-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically and by US mail this 11th day of December, 2006 to the following:

Jason Fudge
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Susan S. Masterton

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by Embarq Florida, Inc., pursuant to Florida Statutes §364.051(4), to Recover 2005 Tropical System Related Costs and Expenses

DOCKET NO. 060644-TL

Filed: December 11, 2006

**EMBARQ FLORIDA, INC.'s RESPONSE TO
COMPSOUTH'S FIRST MOTION TO COMPEL**

Embarq Florida, Inc. (hereinafter, "Embarq") hereby files its Response to the First Motion to Compel Responses to First Set of Interrogatories and First Request for Production of Documents (hereinafter, "Motion to Compel") filed by CompSouth (hereinafter, "CompSouth") and served on Embarq by electronic mail on December 4, 2006.

INTRODUCTION

In its Motion CompSouth appears to request portions of the cost study (specifically the portions related to the establishment of the Annual Cost Factor or ACF) filed by Sprint-Florida, Incorporated (Embarq Florida, Inc.'s predecessor company) in Docket No. 990649B-TP, the generic docket opened to establish UNE rates for Verizon and Sprint.¹ Embarq objected to this request because that cost study, developed as a basis for determining Embarq's forward looking total long run incremental costs for providing various unbundled network elements to CLECs in Embarq's territory, is completely irrelevant to Embarq's Petition to recover, under section 364.051, F.S., the actual costs it incurred to repair, restore or replace its lines, plants or facilities damaged as a result of

¹ Discussions with CompSouth's counsel indicate that CompSouth is not seeking the actual cost studies but rather an explanation of how the ACF portions of those cost studies were developed. Embarq is working with CompSouth's counsel to provide such information (similar to the information Embarq understands was provided in the BellSouth docket), and will serve the attached Supplemental Responses today. These responses may resolve the discovery issues that are the basis for CompSouth's Motion to Compel.

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the 2005 named tropical systems that impacted Embarq's territory. The irrelevancy of the information is emphasized by the methodology Embarq used to calculate the costs for which it is requesting recovery, that is, Embarq is seeking recovery for only "extraordinary" costs, incurred over and above budgeted expenses and further reduced by an amount reflecting Embarq's annual average storm cost. The applicable discovery rules require Embarq to respond only to discovery that is "relevant" or "reasonably calculated to lead to the discovery of admissible evidence." CompSouth's inquiries related to Sprint Florida's (now, Embarq's) 990649B UNE cost studies (which were developed based on the calendar year 2000) do not meet this standard. Therefore, to the extent CompSouth is requesting these cost studies or requiring Embarq to provide detailed information concerning these cost studies, CompSouth's Motion to Compel should be denied.

RESPONSES RELATED TO INDIVIDUAL DISCOVERY REQUESTS

Interrogatory Nos. 1(a)-(c) and 2(a)-(b) and Document Request No. 2

Interrogatory No. 1(a)-(c) asked Embarq for extremely detailed information related to Embarq's "most recent TELRIC studies." Interrogatory No. 2(a) and (b) asks Embarq for information regarding the ACF section of the UNE cost study produced by Embarq in Docket No. 990649B. The cost study produced in that docket is also the most recent relevant "TELRIC study" for Embarq Florida, Inc. so that both Interrogatories are essentially requesting information relating to the ACF portion of the 990649B cost study. Production of Document Request No. 2, again, essentially requests the same information, that is, the ACF portion of the TELRIC cost study prepared as part of Docket No. 990649B. Embarq has objected to these Interrogatories and the POD because this TELRIC cost study, developed for the purpose of establishing forward looking rates

based on the total element long run incremental costs of providing unbundled network elements to CLECs under § 251 of the federal Telecommunications Act, has no relevance to, and is unlikely to lead to the discovery of admissible evidence related to, the direct costs Embarq incurred due to damages to its lines, plants or facilities from the 2005 hurricanes. These direct cost are the costs that Embarq is seeking to recover in this petition, in accordance with the provisions of section 364.051(4)(b), F.S., and these costs are the basis for the proposed 50 cents surcharge, to be applied to Embarq's retail and wholesale customers, in accordance with the statute.

The very different nature of the costs at issue in this proceeding from the costs developed in the 990649B UNE studies (for the purpose of developing TELRIC rates for unbundled network elements) demonstrates the irrelevance of the information that CompSouth is requesting. Further, in this docket Embarq has demonstrated that it is seeking only to recover the "extraordinary" costs that it incurred – deducting from its discovery request costs included in the normal budget and also excluding an amount reflecting Embarq's average annual storm cost expense. Even if the TELRIC-based, forward looking costs included in the 990649B UNE cost studies include any amounts for maintenance or repairs, these costs are excluded from Embarq's recovery request for "extraordinary" costs only and, therefore, are not relevant to the subject matter of this docket or reasonably calculated to lead to the discovery of admissible evidence.

The forward looking TELRIC studies prepared for Docket No. 990649B to establish rates for the purchase of unbundled network elements by CLECs are not relevant or likely to result in the discovery of admissible evidence related to Embarq's request to recover its direct costs related to damage to its lines, plants or facilities from the 2005 storms. Nor are these cost studies relevant to the calculation of the surcharge

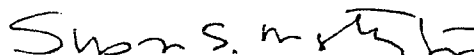
Embarq proposes to assess on its retail and wholesale customers to recover these costs in accordance with the statute. Thus, Embarq properly objected to CompSouth's Interrogatories and PODs requesting this information.

As previously stated, discussions with CompSouth's counsel indicate that CompSouth is not seeking the actual cost studies but rather an explanation of how the ACF portions of those cost studies were developed. Embarq is working with CompSouth's counsel to provide such information (similar to the information Embarq understands was provided in the BellSouth docket), and will serve the attached Supplemental Responses today.

CONCLUSION

CompSouth's Interrogatory Nos. 1(a)-(c) and 2 (a) and (b) are not relevant or reasonably calculated to lead to the discovery of admissible evidence relevant to Embarq's Petition to recover its 2005 storm costs under the provisions of section 364.051(4)(b), F.S. Therefore, the Commission should find that Embarq's objections to the discovery were proper and should deny CompSouth's Motion to Compel.

Respectfully submitted this 11th day of December 2006.



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ATTORNEY FOR EMBARQ FLORIDA,
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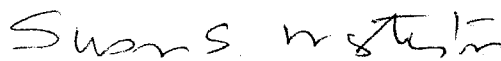
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Embarq Florida Inc.)
to Recover 2005 Tropical System)
Related Costs and Expenses)

Docket No. 060644-TL
Filed: December 11, 2006

NOTICE OF SERVICE

Embarq Florida, Inc. serves this notice that, by and through undersigned counsel, it has served its Supplemental Responses to the Competitive Carriers of the South's First Set of Interrogatories (NOS. 1-2) and First Request for Production of Documents (NO. 2) by U.S. Mail to U.S. Mail to Vicki Gordon Kaufman at 118 North Gadsden Street Tallahassee, FL 32301 and electronically at vkaufman@moylelaw.com on this 11th day of December 2006.



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