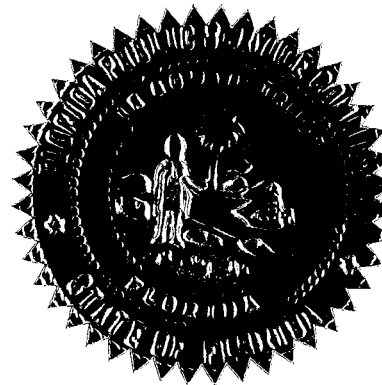


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060644-TL

In the Matter of:

PETITION TO RECOVER 2005 TROPICAL  
SYSTEM RELATED COSTS AND EXPENSES,  
BY EMBARQ FLORIDA, INC.



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PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER MATTHEW M. CARTER, II  
Prehearing Officer

DATE: Wednesday, December 20, 2006

TIME: Commenced at 9:30 a.m.  
Concluded at 9:44 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR  
Official Commission Reporter  
(850) 413-6734

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 11647 DEC 21 06

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 SUSAN S. MASTERTON, ESQUIRE, Embarq Florida, Inc.,  
3 1313 Blairstone Road, Post Office Box 2214, Tallahassee,  
4 Florida 32301, appearing on behalf of Embarq Florida, Inc.

5 CHARLES J. BECK, ESQUIRE, Office of Public Counsel,  
6 c/o 111 West Madison Street, Room 812, Tallahassee Florida  
7 32399-1400, appearing on behalf of the Citizens of the State of  
8 Florida.

9 VICKI GORDON KAUFMAN, ESQUIRE, c/o Moyle Law Firm,  
10 118 North Gadsden Street, Tallahassee, Florida 32301, appearing  
11 on behalf of Competitive Carriers of the South, Inc.

12 MATTHEW FEIL, ESQUIRE, and ALLISON HICKS, ESQUIRE,  
13 Suite 200, 2301 Lucien Way, Maitland, Florida 32751 appearing  
14 (via telephone) on behalf of FDN Communications and CompSouth.

15 JASON FUDGE, ESQUIRE, FPSC General Counsel's Office,  
16 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
17 appearing on behalf of the Florida Public Service Commission  
18 Staff.

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## P R O C E E D I N G S

1  
2 COMMISSIONER CARTER: Good morning.

3 MR. FEIL: Good morning.

4 COMMISSIONER CARTER: I'd like to call this hearing  
5 to order.

6 Staff, would you read the notice, please?

7 MR. FUDGE: Pursuant to notice issued October 18th,  
8 2006, this time and place was set for a hearing -- prehearing  
9 conference in Docket Number 060644 regarding the petition to  
10 recover 2005 tropical system related costs and expenses by  
11 Embarq Florida, Incorporated.

12 COMMISSIONER CARTER: Okay. Now we'll take  
13 appearances.

14 MS. MASTERTON: Susan Masterton representing Embarq.

15 MR. BECK: Charlie Beck, Office of Public Counsel,  
16 appearing on behalf of the citizens of Florida.

17 MS. KAUFMAN: Vicki Gordon Kaufman on behalf of the  
18 Competitive Carriers of the South.

19 COMMISSIONER CARTER: Okay. We have some parties  
20 online?

21 MR. FEIL: Yes, Commissioner Carter. This is Matt  
22 Feil with FDN Communications. Also with me is Ms. Allison  
23 Hicks also with FDN Communications. And we're also appearing  
24 as co-counsel for CompSouth. And we appreciate your permitting  
25 us to participate by phone given the holiday schedule and so

1 forth.

2 COMMISSIONER CARTER: Okay.

3 MR. FUDGE: And Jason Fudge on behalf of Commission  
4 staff.

5 COMMISSIONER CARTER: Okay. Thank you. Mr. Fudge,  
6 any preliminary matters?

7 MR. FUDGE: No, sir.

8 COMMISSIONER CARTER: Okay. Boys and girls, here's  
9 the rules of the road. What I'd like to do is I'd like to  
10 proceed section by section. All right? And that way we'll all  
11 be on one accord. Are there any issues or comments for the  
12 draft order in Section I by any of the parties?

13 MR. FEIL: No, sir.

14 COMMISSIONER CARTER: Section II.

15 MR. FEIL: None.

16 COMMISSIONER CARTER: Section III.

17 MR. FEIL: None here.

18 COMMISSIONER CARTER: Section IV.

19 MR. FEIL: None here.

20 COMMISSIONER CARTER: Section V.

21 MR. FEIL: Commissioner, relative to Section V, we  
22 don't have a comment per se. But I did want to advise you that  
23 after the deposition that is taking place today and some other  
24 discovery issues are sorted out a little bit more, CompSouth  
25 intends on discussing with Ms. Masterton and Embarq and staff

1 and Public Counsel whether or not there's an interest in  
2 conducting the proceeding similarly to how the BellSouth  
3 proceeding was conducted; IE, having the discovery and  
4 testimony submitted into the record and just have oral  
5 argument. So I wanted to advise you of that. And there's a  
6 few places in the prehearing order where such a proceeding  
7 would be impacted, but this was the first that I, that I saw.

8 COMMISSIONER CARTER: Okay. Duly noted.

9 MR. FEIL: Thank you.

10 COMMISSIONER CARTER: We were on Section V. So we're  
11 on Section VI. Section VI, order of witnesses.

12 MS. MASTERTON: Just for clarification, I understand  
13 that Mr. Dickerson will do both his direct and surrebuttal at  
14 the same time, so he would really come first and do both and  
15 not follow up. Is that correct, Jason?

16 MR. FUDGE: Yes. It should be on your copy. We  
17 denoted that with a plus sign where they will do direct and, I  
18 guess, surrebuttal at the same time.

19 MS. MASTERTON: Right. Thanks.

20 COMMISSIONER CARTER: Mr. Beck, you're comfortable  
21 with that? Everything all right?

22 MR. BECK: Yes, sir.

23 COMMISSIONER CARTER: Okay. All right. The train is  
24 leaving the station. Anymore comments on Section VI?

25 MR. FEIL: None, sir.

1           COMMISSIONER CARTER: All righty. Thank you all so  
2 kindly.

3           Section VII. Okay. Hearing none, Section VIII.

4           MS. MASTERTON: Commissioner, Embarq has some  
5 comments on Section VIII.

6           The OPC recently changed its position on Issue 4, I  
7 think it was, and it's raised concerns for us because it's  
8 something that was not previously raised in the record in  
9 either testimony, in testimony or, or otherwise for Embarq to  
10 be able to respond to that. So we feel like this late filing  
11 of it -- I think it came up through kind of implication of some  
12 discovery questions that staff served on us on Friday, this  
13 past Friday. So we feel like we haven't had an opportunity to  
14 really adequately respond to that issue since it was not raised  
15 prior. And we've had a few discussions with OPC and staff  
16 about us being given an opportunity to address it, and I guess  
17 I'd like to, to kind of discuss that now. I mean, we weren't  
18 able to file it in our testimony because -- respond to it in  
19 our testimony because it wasn't there. And there's no briefing  
20 schedule here, so we won't be able to talk about it in our  
21 briefs. And right now we're thinking we'll have to address it  
22 at the, at the hearing either both through testimony and oral  
23 argument or otherwise.

24           COMMISSIONER CARTER: Mr. Beck?

25           MR. BECK: Commissioner, I have talked with

1 Ms. Masterton about this and I, quite frankly, have no concern  
2 at all if she -- if Embarq wants to raise it in testimony or  
3 argument or respond in any which way. I'm fine with that.

4 COMMISSIONER CARTER: Ms. Kaufman, any comment?

5 MS. KAUFMAN: I think that CompSouth would not have  
6 an objection to Ms. Masterton responding to OPC's change of  
7 position.

8 COMMISSIONER CARTER: Okay. Our parties that are on  
9 the phone, do you guys --

10 MR. FEIL: We agree with Ms. Kaufman's comment.

11 COMMISSIONER CARTER: Okay. Mr. Fudge,  
12 recommendations.

13 MR. FUDGE: There is currently a briefing schedule  
14 for one issue. December 29th is when those briefs are due. We  
15 could expand the page count for those briefs and Embarq could  
16 address that issue in those briefs. And there's also  
17 outstanding discovery, as she said, where she could respond on  
18 the questions that staff raised, and there's also the  
19 deposition today where their witness could address that issue.

20 COMMISSIONER CARTER: That sounds reasonable to me.  
21 Let's do that. That may be -- so we can try to accommodate  
22 everyone.

23 MS. MASTERTON: Okay. So we would be able to include  
24 that in our briefs filed on the 29th? And can I ask that to  
25 the extent that there's, you know, factual issues that we

1 aren't able to get in the record either through the depositions  
2 or otherwise, that we might be able to include some short  
3 testimony addressing those issues with our briefs filed on the  
4 29th? I mean, it's likely with the discovery responses and the  
5 depositions that that wouldn't be the case, but I think we'd  
6 like to reserve that opportunity.

7 MR. FUDGE: Yeah. I guess that would just be subject  
8 to a motion by OPC to address it if there's anything in --

9 MR. BECK: I have no problem with it as long as it's  
10 on that issue and not something else. But it's certainly all  
11 right with our office.

12 MR. FUDGE: Okay.

13 COMMISSIONER CARTER: We like to cooperate as much as  
14 possible where possible. So I think that -- and I'd like, you  
15 know, I'd like the parties to work out as much as you can. So  
16 I think, Mr. Fudge, just work with staff and we'll try to  
17 accommodate everyone on that.

18 MS. MASTERTON: Okay. Thank you.

19 COMMISSIONER CARTER: All righty then. That was  
20 Issue -- was that Issue 7? Section VII, sorry. Section VII.

21 Okay. Now we move to -- let me turn my page.

22 MR. FEIL: Commissioner, were we covering all of  
23 Section VII, because I did have one comment on Issue --

24 COMMISSIONER CARTER: Well, speak now or forever hold  
25 your piece.



1 MR. FEIL: All right. On Issue 2B, and specifically  
2 the CompSouth position on Page 8, assuming we all have the same  
3 draft, if you look at -- on Page 8 for Number 3, it says,  
4 "Embarq's proposed charge is not competitively neutral." That  
5 little paragraph there which consists of two sentences should  
6 be deleted, and the sentence beginning "To the extent that the  
7 Commission determines," that section should be moved up.

8 MR. FUDGE: That was, that was deleted yesterday and  
9 the parties present have a copy of that.

10 MR. FEIL: Okay. Thank you very much. I just wanted  
11 to make sure.

12 COMMISSIONER CARTER: Okay.

13 MR. FEIL: And other than that, CompSouth and FDN  
14 didn't have any other comment on Section -- on the issues  
15 section.

16 COMMISSIONER CARTER: Okay. And that was Section  
17 VII; correct? Are we all on the same page?

18 MS. MASTERTON: VIII. I think that was VIII.

19 COMMISSIONER CARTER: That was Section VIII?

20 Okay. Let me -- I guess I should have unstapled my  
21 pages here. All righty.

22 Then that gets us to Section IX. Section IX. Any  
23 corrections, recommendations or changes by any of the parties?

24 Hearing none, Section X.

25 MR. FEIL: No comment other than to note that this

1 again would be a place where it may be noted if the hearing is  
2 done as the BellSouth hearing was conducted, Commissioner. But  
3 no comment otherwise at this time.

4 MS. MASTERTON: I mean, I just want to say that we  
5 have more to think about than Mr. Feil does as to whether we'll  
6 be in a position to handle the hearing the way BellSouth did.  
7 But certainly if that comes to that, you know, that would  
8 change that section.

9 COMMISSIONER CARTER: Okay.

10 MR. FEIL: I understand, Commissioner, as Ms.  
11 Masterton has pointed out, that that is not ripe yet, and it's  
12 something that we'll be discussing, I intend to discuss with  
13 her in any event and with the parties.

14 MS. MASTERTON: Right. And we are open to that  
15 discussion.

16 MR. FEIL: Thank you.

17 COMMISSIONER CARTER: Okay. Mr. Beck, are you okay  
18 with that?

19 MR. BECK: Yes.

20 COMMISSIONER CARTER: Okay. Ms. Kaufman?

21 MS. KAUFMAN: Yes, sir.

22 COMMISSIONER CARTER: Staff?

23 MR. FUDGE: Yes, Commissioner.

24 COMMISSIONER CARTER: Okay then. I think that -- now  
25 that we get to Section XI, I think I'm on the right page.

1 Section XI.

2 MR. FEIL: Commissioner, the only comment I wanted to  
3 make relative to Section XI is the motion to compel which is  
4 noted under both the Embarq heading and CompSouth heading. I  
5 communicated with Mr. Fudge and Ms. Masterton yesterday that we  
6 intend to confer about the necessity of the Commission ruling  
7 or Commissioner ruling on that motion on Friday. So, in short,  
8 I've committed to let staff know by Friday whether or not it's  
9 necessary for you to rule on that motion, and would express a  
10 desire for you to indulge us in that so that we have the  
11 opportunity to hopefully reach a cooperative resolution on that  
12 so the Commissioner would not have to rule.

13 COMMISSIONER CARTER: Okay. Any other parties? Yes,  
14 ma'am.

15 MS. MASTERTON: I mean, no, we will -- we intend to  
16 work with CompSouth to try to come to a resolution of that  
17 issue without the need to rule on the motion.

18 COMMISSIONER CARTER: Resolution is appreciated.  
19 Okay. Section XII.

20 MR. FEIL: No comment.

21 COMMISSIONER CARTER: Section XII.

22 Okay. I skip from there to Section 14. Is there a  
23 XIII? Is this like a hotel; you don't have a 13th floor in a  
24 hotel, so.

25 MS. MASTERTON: Are we on XIII or XIV? Because I

1 did, I did have a comment.

2 COMMISSIONER CARTER: I don't have a XIII.

3 MS. MASTERTON: Okay. Yeah, I don't -- well, see,  
4 somebody is superstitious.

5 COMMISSIONER CARTER: That's okay. We can go to XIV.

6 MS. MASTERTON: Until we resolve -- unless we decide  
7 to handle this like the BellSouth case, which I think they had  
8 30 minutes to be used for opening or closing, I'm willing to  
9 suggest that we have in addition to opening statements ten  
10 minutes for closing statements since we're not going to have  
11 posthearing briefs in this matter. I think that's, you know,  
12 typical to give us an opportunity to summarize our arguments.

13 COMMISSIONER CARTER: Well, I would suggest that for  
14 opening and closing you have 15 minutes per party. You split  
15 them up however you desire to do it.

16 MS. MASTERTON: Okay. I mean, that would be  
17 acceptable.

18 COMMISSIONER CARTER: That's acceptable to me too.  
19 Okay. That's fair, don't you think, Mr. Beck?

20 MR. BECK: More than fair.

21 COMMISSIONER CARTER: Thank you. Thank you so  
22 kindly.

23 Mr. Fudge, any other matters pending?

24 MR. FUDGE: No, Commissioner.

25 COMMISSIONER CARTER: Okay.

1 MS. MASTERTON: Excuse me. I'm sorry.

2 COMMISSIONER CARTER: Yes, ma'am, Ms. Masterton.

3 MS. MASTERTON: I probably should have raised this at  
4 stipulations, but I did want to clarify with staff, you know,  
5 typically the discovery is moved into the record at the hearing  
6 as a stipulated exhibit, and I just was, you know --

7 MR. FUDGE: Yeah. As we discussed, we're going to  
8 try to have that moved in and also some of the audit responses  
9 that we need to work through, so.

10 MS. MASTERTON: And I guess -- because we're the ones  
11 with the discovery right now, I mean, are you going to do what  
12 the Commission has typically done recently and ask us to be  
13 making the copies and all of that for the record or is the  
14 staff going to be doing that?

15 MR. FUDGE: Yeah.

16 MS. MASTERTON: Okay. So --

17 MR. FUDGE: Yeah. We'll work on that today and  
18 discuss that after the depo, so.

19 MS. MASTERTON: Okay. Thank you.

20 MR. FEIL: Commissioner, this is Mr. Feil. We're  
21 probably not going to have an issue with that. But since  
22 there's still some discovery pending, the deposition hasn't  
23 taken place, we're sort of reserving judgment on whether or not  
24 we're all going to be in agreement, but the likelihood is that  
25 we will all be in agreement.

1                   COMMISSIONER CARTER: Thank you so kindly. Are there  
2 any other matters of any of the parties? Hearing none, we are  
3 adjourned.

4                   (Prehearing Conference adjourned at 9:44 a.m.)  
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I, LINDA BOLES, CRR, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 21<sup>st</sup> DAY OF DECEMBER, 2006.

Linda Boles  
LINDA BOLES, CRR, RPR  
FPSC Official Commission Reporter  
(850) 413-6734