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Sent: Tuesday, February 05, 2013 3:31 PM
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Subject: Docket No. 120208-TX
Attachments: MyScan.pdf

Attached for electronic filing in the referenced docket, please find the Post-Workshop Comments of the Competitive Carriers of the South, Inc. As always, please don't hesitate to contact me if you have any questions whatsoever.

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b. **Docket 120208 -- Petition to initiate rulemaking to revise and amend Rule 25-22.0365, F.A.C., by Competitive Carriers of the South, Inc.**

c. On behalf of: Competitive Carriers of the South, Inc.

d. There are a total of pages: 16

e. Description: Comments



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February 5, 2013

VIA ELECTRONIC FILING - *FILINGS@PSC.STATE.FL.US*

Ms. Ann Cole, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 120208-TX - **Petition to initiate rulemaking to revise and amend Rule 25-22.0365, F.A.C., by Competitive Carriers of the South, Inc.**

Dear Ms. Cole:

Attached for electronic filing in the above-referenced docket, please find a copy of the Post-Workshop Comments of the Competitive Carriers of the South, Inc.

Thank you for your kind assistance with this filing. As always, please do not hesitate to contact me if you have any questions or concerns whatsoever.

Sincerely,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 618
Tallahassee, FL 32301
(850) 521-1706



DOCUMENT NUMBER-DATE

00718 FEB-5 2013

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: **Petition to initiate rulemaking**)
to revise and amend Rule 25-22.0365,)
F.A.C., by Competitive Carriers)
of the South, Inc.)

Docket No. 120208-TX
Filed: February 5, 2013

POST-WORKSHOP COMMENTS
OF THE
COMPETITIVE CARRIERS OF THE SOUTH, INC. (COMPSOUTH)

The Competitive Carriers of the South, Inc. ("CompSouth") hereby submit these post-workshop Comments consistent with the revised case schedule for this Docket. With these Comments, CompSouth also submits an alternative, modified Rule proposal ("modified Rule proposal"), which is responsive to comments and concerns expressed at the workshop, as further explained herein. The modified Rule proposal is attached hereto as Attachment A.

BACKGROUND

1. On July 31, 2012, CompSouth submitted the Petition initiating this proceeding for the express purpose of seeking changes to Rule 25-22.0365, F.A.C. that would facilitate quicker resolution of certain types of carrier disputes that cause a consumer to be without service or to have significantly impaired service.
2. CompSouth explained that, while the current Rule contemplates expedited resolution of certain carrier-to-carrier disputes within 120 days, resolution in that 4 month time frame is simply too long when presented with situations involving a consumer is left without service or with severely impaired service. As noted in the Petition, in such cases, the customer tends to be very anxious to find a quick solution to his/her service issues and will often turn to whichever provider can most expeditiously establish service to the consumer - whether it be the consumer's first choice, or the carrier creating the problem, or another carrier entirely. For most customers,

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it is simply not feasible to wait 120 days for a resolution of their service problems. Thus, in these situations, customers may find themselves disenfranchised of their ability to obtain service from their preferred carrier, while the carrier seeking to establish service is suddenly at risk of losing the customer – and the associated revenues - entirely.

3. To address these limited situations, CompSouth proposed changes to Rule 25-22.0365, F.A.C., with the intended purposes of: 1) further encouraging and facilitating informal resolution of such disputes; and 2) shortening the formal, dispute resolution process in situations where the informal approach proves unsuccessful.

4. On November 15, 2012, the Commission staff conducted a Rule Development workshop to discuss the changes to Rule 25-22.0365, F.A.C., proposed by CompSouth. Upon thoughtful consideration of the discussion at that workshop, CompSouth offers the following responsive Comments, along with the referenced modified Rule proposal.

COMMENTS

5. At the outset, CompSouth notes (only partially tongue-in-cheek) that Woodrow Wilson had it right when he said “If you want to make enemies, try to change something.” That said, we heard the concerns raised at the workshop in November. While we believe that some of those concerns are short-sighted, as we will further explain herein, CompSouth also recognizes that some of the issues raised do have merit, particularly those regarding practical application of the proposed amendments. Consequently, as noted above, CompSouth has prepared a modified Rule proposal that provides a more narrowly crafted, detailed approach to the need for a hyper-expedited process for resolving disputes that severely impair a customer’s service.

I. Greater Clarity

6. The modified Rule proposal, as reflected in Attachment A hereto, is responsive to the most persistent concern raised at the workshop, that being lack of specificity and clarity of both the process and the circumstances to which it would apply. Throughout the workshop, concerns were voiced that the changes initially offered by CompSouth made the process more “vague and uncertain” (AT&T, Tr. 11), and that there was “ambiguity” in the criteria for application of the expedited process (CenturyLink, Tr. 13). CompSouth has taken those concerns to heart and has modified the rule proposal to accommodate. The resulting Rule proposal, as modified, provides, a workable solution that injects significantly greater clarity as to the details and application of a more accelerated process for resolving a specific categories of disputes (“accelerated process”). At the same time, the modified Rule proposal maintains the integrity of the original, designed purpose of CompSouth’s petition in that it provides a process that will avoid placing customers caught in the middle of a carrier dispute in the untenable position of having to switch their account to a carrier other than their carrier of choice in order to obtain service in a timely and reliable manner.

7. Specifically, the modified rule proposal eliminates some of the terms and phrases with which commenters took issue at the workshop. The references to “immediate and negative effect on a customer” and “immediate customer-impacting effects” have been eliminated. Instead, the modified proposal enumerates specific situations to which the proposed accelerated process would apply at new paragraph (13).

8. Likewise, the modified proposal now specifically delineates the types of customer accounts involved that would trigger operation of the accelerated process. As CompSouth’s representative, Greg Darnell, explained at the workshop (Tr. 4), businesses are particularly ill-

equipped to function without telecommunications services for any length of time. Therefore, the Rule proposal is revamped to apply specifically to situations involving “enterprise” and “commercial” customers, as defined in the modified proposal at subparagraph (13)(i).

II. Defined Process

9. Perhaps most significantly, the modified proposal includes a defined process for handling these types of complaints. This process is outlined, step by step, in paragraph (13) of the modified Rule proposal. This more detailed process retains many of the concepts originally tendered by CompSouth, such as the pre-Complaint meeting with Commission staff, but provides more detail as to the scope and timing of individual steps in the accelerated process. In response to concerns aired at the workshop, the modified Rule proposal also:

- a. Provides greater detail as to the timing and nature of the information and pleadings to be submitted;
- b. Specifies that the hearing will be properly noticed and conducted no sooner than 14 days after the response to the Complaint is filed;
- c. Clarifies that the Prehearing Officer has the flexibility to determine whether or not pre-filed rebuttal testimony shall be required;
- d. More clearly contemplates that discovery will be conducted over the course of the proceeding; and
- e. More clearly provides that the applicability of the “accelerated” process will be assessed by the Prehearing Officer and reassessed as various factors change.

III. Consistent with Due Process

10. With regard to the due process concerns raised at the workshop, such concerns find no support in Florida Statutes. To the contrary, Section 364.16 (6), Florida Statutes, contemplates

not only that the Commission would adopt an expedited process for resolving disputes between carriers, but that the final determination thereunder would be made “within 120 days.” Use of the word “within” clearly indicates that the Legislature contemplated that the Commission’s final decision could be made in less, even significantly less, than 120 days – but not more than 120 days. By the same token, Rule 28-106.208, Florida Administrative Code, contemplates that a hearing will not be conducted on less than 14 days’ notice, unless otherwise agreed by the parties. The modified Rule proposal contemplates 14 days’ notice.

11. The modified Rule proposal does not conflict with either Section 120.569(2)(o), Florida Statutes, or Rule 28-106.211, Florida Administrative Code, which contemplate that an administrative law judge (in this case, the Prehearing Officer) will enter a scheduling order to ensure the “just, speedy, and inexpensive resolution” of a proceeding. The Rule also does not prevent or impair the Prehearing Officer’s ability to require a prehearing conference or otherwise require the parties to confer and resolve procedural matters consistent with Rule 28-106.209, Florida Administrative Code. The Rule is likewise consistent with Section 120.57(1)(b), Florida Statutes, in that it provides an opportunity to respond, present evidence and argument, conduct cross-examination, submit rebuttal evidence, and be represented by counsel.

12. The modified Rule proposal offered now by CompSouth addresses any readily cognizable areas of concern with regard to due process; nonetheless, should any conflicts with due process or the APA be identified, CompSouth stands ready to work with Commission staff and other interested persons to produce a workable solution.

IV. Necessary Changes

13. This modified Rule proposal is not a solution looking for a problem to fix. Suffice it to say that CompSouth and its members would not have invested the time necessary to develop and

move this proposal forward were it not a matter of very real concern to the CompSouth members. Undoubtedly, many disputes can be resolved simply through better communication between carriers, the process contemplated by the existing Rule, or through the various carrier dispute mechanisms contemplated by interconnection agreements. There are, however, situations in which those approaches are simply not sufficient. A business customer unable to receive telephone calls or emails because of an issue that is the subject of a carrier dispute is unlikely to wait patiently for that dispute to be resolved before taking action. Understandably, in most instances, the business owner will seek an expeditious solution that will provide his/her business with service. With no assurance that a truly expedited complaint process is available, the readily apparent solution available to the customer is to switch the business account to the provider that can ensure service immediately, whether or not that carrier is the customer's first choice. At that point, the carrier dispute becomes moot, perhaps without ever having been brought to the Commission's attention. The customer is, therefore, deprived of his right to choose his provider by mere delay of process, and the benefits of competition in the telecommunications market are restricted.

14. Whether or not the ILEC representatives at the workshop are personally aware of situations such as those described here and at the workshop by Mr. Darnell is simply not a reason to table the CompSouth proposal. The scenarios CompSouth has presented are practical, realistic, and based upon information regarding experiences of individual CLECs. **Moreover, in the event that no situation fitting the modified Rule proposal ever arises, then there is no harm whatsoever. The process would simply not be used. It would, however, be there in the event it is needed.**

15. To be perfectly clear, the Rule also works both ways. Should a disputed issue impair an ILEC's service to a customer, nothing prevents the ILEC from initiating a proceeding under the proposed accelerated process.

16. Furthermore, this is not just a "CLEC rule," even though it is a CompSouth proposal. This is a customer rule. The real benefit is to ensure that customers are: 1) not harmed when caught in the middle of a carrier dispute; and 2) able to take full advantage of the competitive telecommunications market as contemplated by both Congress and the Florida Legislature. In this tough economic environment, businesses, particularly small businesses, can ill-afford any situation that impacts their ability to communicate with their customers and run their business operations.

V. Workable Solution

17. It should not be overlooked that this modified proposal is generally consistent with expedited dispute resolution provisions already contained in some interconnection agreements ("ICAs"). Thus, the parties to those ICAs have recognized that an expedited resolution can be had.¹ The modified Rule proposal suggested here is not, however, redundant of those ICA provisions. Rather, the modified Rule proposal adds clarity to the process and delineates when the original expedited process will apply as opposed to the new, accelerated process. The clear benefit of this delineation is to avoid confusion – and delay – on the front end of a complaint regarding which process should be utilized.

¹ See, for instance, ICA between FDN Communications and Sprint-Florida approved in Docket No. 041464-TP (which contemplates seeking 60-day expedited resolution before the Commission at Section 24.1); ICA between CenturyLink and US LEC approved in Docket No. 100367-TP (which contemplates 60-day resolution before the Commission at Section 24.1); ICA between AT&T and Cbeyond approved in Docket No. 070220-TP (which contemplates expedited resolution upon petition to the Commission at Section 11); and ICA between Verizon Florida Inc. and Sprint Communications adopted by ITC/DeltaCom, as approved in Docket No. 031098-TP (which contemplates a shortened, 5-day, pre-arbitration process for disputes that "directly or materially affect[s]" a customer's service, to be followed by expedited arbitration under AAA Commercial Arbitration Rules).

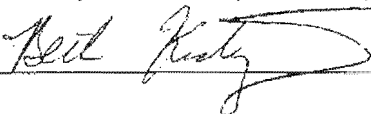
18. Finally, CompSouth has taken into account FCTA's comments at the workshop regarding the reference in the Rule to Section 364.058, Florida Statutes. That reference is in the existing version of the Rule that CompSouth had not originally proposed to change. However, we agree with FCTA that while we are looking at amending the Rule, it makes sense to also update that reference in paragraph (8) to point instead to Section 364.16, Florida Statutes. The modified version of CompSouth's Rule proposal attached hereto contains the updated reference.

CONCLUSION

In sum, CompSouth strongly believes that changes are needed to provide an accelerated dispute resolution process designed for specific types of complaint situations that directly impact a customer's service, potentially forcing the customer to switch to a carrier other than his chosen provider. We have taken into account the comments at the workshop and now offer a modified Rule proposal that CompSouth believes should alleviate the concerns raised, while still addressing an area of very real concern for CompSouth members. CompSouth asks, therefore, that the modified Rule proposal attached hereto be considered at a subsequent Rulemaking Workshop.

CompSouth appreciates the opportunity to submit these comments and looks forward to working with the Commission staff and other participants towards a workable solution.

Respectfully submitted this 5th day of February, 2013, by:



Beth Keating
Gunster Law Firm
215 South Monroe Street
Suite 601
Tallahassee, FL 32301

On behalf of the Competitive Carriers of the South, Inc.

ATTACHMENT
DOCKET NO. 120208-TX

COMPSOUTH
REVISED RULE AMENDMENT PROPOSAL
(Clean and Legislative format)

25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.

(1) The purpose of this rule is to establish an expedited process for resolution of disputes between telecommunications companies ("companies").

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute informally. In the event that the parties are unable to resolve their dispute independently, a party intending to invoke the expedited dispute resolution process addressed herein shall, prior to filing a request under subparagraph (3), notify Commission staff of the dispute and request that Commission staff conduct an informal meeting. Such meeting shall be conducted within 7 days of the request for the purpose of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate effect on customers' ability to receive service, anticipated discovery needs, and case scheduling. Any agreements resulting from such informal meeting with Commission staff shall be reduced to writing and, if deemed necessary by Commission staff, approved by the Commission.

(3) To initiate the expedited dispute resolution process, the complainant company must file with the Commission a request for expedited proceeding, direct testimony, and exhibits, and must simultaneously serve the filing on the other company involved in the dispute. The request for expedited proceeding is in lieu of the petition required by Rule 28-106.201, F.A.C.

(4) The request for expedited proceeding must include:

(a) The name, address, telephone number, facsimile number and e-mail address of the complainant company and its representative to be served, if different from the company;

(b) A statement of the specific issue or issues to be litigated and the complainant company's position on the issue or issues;

(c) The relief requested;

(d) A statement attesting to the fact that the complainant company attempted to resolve the dispute informally; and

(e) An explanation of why the use of this expedited process is appropriate. The explanation of why use of the expedited process is appropriate shall include a discussion of the following:

1. The number and complexity of the issues;

2. The policy implications that resolution of the dispute is expected to have, if any;

3. The topics on which the company plans to conduct discovery, including a description of the nature and quantity of information expected to be exchanged;

4. The specific measures taken to resolve the dispute informally; and

5. Any other matter the company believes relevant to determining whether the dispute is one suited for an expedited proceeding.

(5) Any petition for intervention shall provide the information required by paragraphs (4)(a)-(c) and (e) as it applies to the intervenor.

(6) The request for expedited proceeding shall be dismissed if it does not substantially comply with the requirements of subsections (2), (3) and (4), above. The first dismissal shall be without prejudice.

(7) The respondent company may file a response to the request. The response must be filed within 14 days of the filing of the request for expedited proceeding.

(a) The response shall include the name, address, telephone number, facsimile number and e-mail address of the respondent and the respondent's representative to be served, if different from the respondent.

(b) The response to the request may include any information that the company believes will help the Prehearing Officer decide whether use of the expedited dispute resolution process is appropriate. Such information includes, but is not limited to:

1. The respondent's willingness to participate in this process;

2. Statement of the specific issue or issues to be litigated from the respondent's perspective, and the respondent's position on the issue or issues;

3. A discussion of the topics listed in subparagraphs (4)(b)-(e) 1.-5. above.

(8) No sooner than 14 days after the filing of the request for expedited proceeding, but promptly thereafter, the Prehearing Officer will decide whether use of the expedited proceeding is appropriate. The decision will be based on the provisions of Section 364.16, F.S., the materials initially filed by the complainant company ~~the factors provided in Section 364.058(3), F.S., the materials initially filed by the complainant company~~ and, if a response is filed, the materials included in the response.

(9) Except as provided in paragraph (13) hereof or ~~Unless~~ otherwise provided by order of the Prehearing Officer, based on the unique circumstances of the case, the schedule for each expedited case will be as follows:

(a) Day 0 – request for expedited proceeding, direct testimony and exhibits are filed;

(b) Day 14 – deadline for filing a motion to dismiss, and a response to the request for expedited proceeding;

(c) Day 21 – deadline for filing a response to the motion to dismiss, if one is filed; and, deadline for filing petitions to intervene, and intervenor testimony and exhibits;

(d) Day 42 – deadline for the Commission staff to file testimony;

(e) Day 56 – deadline for the respondent to file rebuttal testimony.

(10) The Prehearing Officer shall decide whether post-hearing briefs will be filed or if closing arguments will be made in lieu of post-hearing briefs. In making this decision the Prehearing Officer will consider such things as the number of parties, number of issues, complexity of issues, preferences of the parties, and the amount of testimony stipulated into the record.

(11) The Commission shall make a decision on the dispute within 120 days of the complainant company's filing of the request for expedited proceeding, direct testimony and exhibits, except as otherwise provided in paragraph (13) hereof.

(12) Responses to discovery requests shall be made within 15 days of service of the discovery requests, unless the Prehearing Officer decides otherwise based on the unique circumstances of the case.

(13) In any instance in which a dispute between telecommunications companies will result in loss of dial-tone for a commercial or enterprise customer account; the inability of any such customer to receive or complete calls; the inability of any such customer to be able to access the Internet or to bring up a data circuit; or the failure to port numbers to such from customer's preferred carrier; the Commission shall proceed to resolve the matter in accordance with the following accelerated process:

(a) Commission staff shall conduct an informal meeting with the companies, consistent with subsection (2), within seven (7) days of being notified of the dispute for purposes of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate effect on customers' ability to receive service, anticipated discovery needs, and case scheduling;

(b) In the event the informal meeting does not result in a resolution to the dispute, the complaining party shall file a request for expedited proceeding consistent with subparagraph (4) of this Rule with additional information regarding the basis for invoking the provisions of paragraph (13) hereof, along with any testimony and related exhibits that the complaining party intends to offer in the proceeding.

(c) A response, if any, to the request shall be filed within ten (10) days of the request for expedited proceeding and shall otherwise be consistent with subparagraph (7) of this Rule.

(d) A hearing will be scheduled as soon as the Commission calendar will accommodate, but no sooner than fourteen (14) days following the filing of a response, if any, or the date that such response would have been due to be filed pursuant to this Rule.

(e) The Prehearing Officer will make a determination, based upon the scheduled date of the hearing, as to whether rebuttal testimony shall be prefiled.

(f) For purposes of proceedings arising under this subsection, the Prehearing Office may determine that responses to discovery requests shall be made in less than the 15 days, but shall in no instance require responses to be made in less than five (5) days.

(g) To the extent that the Commission's calendar can accommodate a hearing consistent with the accelerated process contemplated by this section, the Commission shall endeavor to resolve a complaint arising under this subsection within 60 days of the date that a request under subparagraph (13)(b) is filed.

(h) Consistent with paragraphs (15) and (16) of this rule, the applicability of this accelerated process will be reassessed as factors affecting the complexity of the case, number of issues, number of parties, or customer impact change during the proceeding.

(i) For purposes of this subsection, an "enterprise customer" is any business customer or applicant for service that includes high-capacity circuits, such as DS1, DS3, or OCN capacity circuits, unbundled network elements, shared port adaptors and interface processors, or Ethernet service. For purposes of this subsection, a "commercial customer" shall mean any non-residential customer or applicant for service for any office, store, factory, or other such location where commercial transactions or operations are conducted.

(134) Service of all documents on the parties shall be by e-mail, facsimile or hand delivery. An additional copy shall be furnished by hand delivery, overnight mail or U.S. mail if the initial service was by e-mail or facsimile. Filing of all documents with the Commission shall be by hand delivery, overnight mail or any method of electronic filing authorized by the Commission.

(145) The applicability of this rule to the proceeding will be reassessed as factors affecting the complexity of the case, number of issues, or number of parties change during the proceeding.

(156) Once the Prehearing Officer has determined that use of an expedited proceeding is appropriate, nothing in this rule shall

prevent the Prehearing Officer from making a later determination that the case is no longer appropriate for an expedited proceeding based on the number of parties, number of issues or the complexity of the issues. Nothing in this rule shall prevent the Commission from initiating an expedited proceeding on its own motion.

Rulemaking Authority 350.127(2), 364.16(6) FS. Law Implemented 364.16(6) FS. History—New 8-19-04.

25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.

(1) The purpose of this rule is to establish an expedited process for resolution of disputes between telecommunications companies ("companies").

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute informally. In the event that the parties are unable to resolve their dispute independently, a party intending to invoke the expedited dispute resolution process addressed herein shall, prior to filing a request under subparagraph (3), notify Commission staff of the dispute and request that Commission staff conduct an informal meeting. Such meeting shall be conducted within 7 days of the request for the purpose of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate effect on customers' ability to receive service, anticipated discovery needs, and case scheduling. Any agreements resulting from such informal meeting with Commission staff shall be reduced to writing and, if deemed necessary by Commission staff, approved by the Commission.

(3) To initiate the expedited dispute resolution process, the complainant company must file with the Commission a request for expedited proceeding, direct testimony, and exhibits, and must simultaneously serve the filing on the other company involved in the dispute. The request for expedited proceeding is in lieu of the petition required by Rule 28-106.201, F.A.C.

(4) The request for expedited proceeding must include:

(a) The name, address, telephone number, facsimile number and e-mail address of the complainant company and its representative to be served, if different from the company;

(b) A statement of the specific issue or issues to be litigated and the complainant company's position on the issue or issues;

(c) The relief requested;

(d) A statement attesting to the fact that the complainant company attempted to resolve the dispute informally; and

(e) An explanation of why the use of this expedited process is appropriate. The explanation of why use of the expedited process is appropriate shall include a discussion of the following:

1. The number and complexity of the issues;

2. The policy implications that resolution of the dispute is expected to have, if any;

3. The topics on which the company plans to conduct discovery, including a description of the nature and quantity of information expected to be exchanged;

4. The specific measures taken to resolve the dispute informally; and

5. Any other matter the company believes relevant to determining whether the dispute is one suited for an expedited proceeding.

(5) Any petition for intervention shall provide the information required by paragraphs (4)(a)-(c) and (e) as it applies to the intervenor.

(6) The request for expedited proceeding shall be dismissed if it does not substantially comply with the requirements of subsections (2), (3) and (4), above. The first dismissal shall be without prejudice.

(7) The respondent company may file a response to the request. The response must be filed within 14 days of the filing of the request for expedited proceeding.

(a) The response shall include the name, address, telephone number, facsimile number and e-mail address of the respondent and the respondent's representative to be served, if different from the respondent.

(b) The response to the request may include any information that the company believes will help the Prehearing Officer decide whether use of the expedited dispute resolution process is appropriate. Such information includes, but is not limited to:

1. The respondent's willingness to participate in this process;

2. Statement of the specific issue or issues to be litigated from the respondent's perspective, and the respondent's position on the issue or issues;

3. A discussion of the topics listed in subparagraphs (4)(b)-(e)1.-5. above.

(8) No sooner than 14 days after the filing of the request for expedited proceeding, but promptly thereafter, the Prehearing Officer will decide whether use of the expedited proceeding is appropriate. The decision will be based on the provisions of Section 364.16, F.S., the materials initially filed by the complainant company and, if a response is filed, the materials included in the response.

(9) Except as provided in paragraph (13) hereof or unless otherwise provided by order of the Prehearing Officer, based on the unique circumstances of the case, the schedule for each expedited case will be as follows:

(a) Day 0 – request for expedited proceeding, direct testimony and exhibits are filed;

- (b) Day 14 – deadline for filing a motion to dismiss, and a response to the request for expedited proceeding;
- (c) Day 21 – deadline for filing a response to the motion to dismiss, if one is filed; and, deadline for filing petitions to intervene, and intervenor testimony and exhibits;
- (d) Day 42 – deadline for the Commission staff to file testimony;
- (e) Day 56 – deadline for the respondent to file rebuttal testimony.

(10) The Prehearing Officer shall decide whether post-hearing briefs will be filed or if closing arguments will be made in lieu of post-hearing briefs. In making this decision the Prehearing Officer will consider such things as the number of parties, number of issues, complexity of issues, preferences of the parties, and the amount of testimony stipulated into the record.

(11) The Commission shall make a decision on the dispute within 120 days of the complainant company's filing of the request for expedited proceeding, direct testimony and exhibits, except as otherwise provided in paragraph (13) hereof.

(12) Responses to discovery requests shall be made within 15 days of service of the discovery requests, unless the Prehearing Officer decides otherwise based on the unique circumstances of the case.

(13) In any instance in which a dispute between telecommunications companies will result in loss of dial-tone for a commercial or enterprise customer account; the inability of any such customer to receive or complete calls; the inability of any such customer to be able to access the Internet or to bring up a data circuit; or the failure to port numbers to such customer's preferred carrier; the Commission shall proceed to resolve the matter in accordance with the following accelerated process:

(a) Commission staff shall conduct an informal meeting with the companies, consistent with paragraph (2), within seven (7) days of being notified of the dispute for purposes of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate effect on customers' ability to receive service, anticipated discovery needs, and case scheduling;

(b) In the event the informal meeting does not result in a resolution to the dispute, the complaining party shall file a request for expedited proceeding consistent with paragraph (4) of this Rule with additional information regarding the basis for invoking the provisions of paragraph (13) hereof, along with any testimony and related exhibits that the complaining party intends to offer in the proceeding.

(c) A response, if any, to the request shall be filed within ten (10) days of the request for expedited proceeding and shall otherwise be consistent with paragraph (7) of this Rule.

(d) A hearing will be scheduled and noticed as soon as the Commission calendar will accommodate, but no sooner than fourteen (14) days following the filing of a response, if any, or the date that such response would have been due to be filed pursuant to this Rule.

(e) The Prehearing Officer will make a determination, based upon the scheduled date of the hearing, as to whether rebuttal testimony shall be prefiled.

(f) For purposes of proceedings arising under this subsection, the Prehearing Officer may determine that responses to discovery requests shall be made in less than the 15 days, but shall in no instance require responses to be made in less than five (5) days.

(g) To the extent that the Commission's calendar can accommodate a hearing consistent with the accelerated process contemplated by this section, the Commission shall endeavor to resolve a complaint arising under this subsection within 60 days of the date that a request under subparagraph (13)(b) is filed.

(h) Consistent with paragraphs (15) and (16) of this rule, the applicability of this accelerated process will be reassessed as factors affecting the complexity of the case, number of issues, number of parties, or customer impact change during the proceeding.

(i) For purposes of this subsection, an "enterprise customer" is any business customer or applicant for service that includes high-capacity circuits, such as DS1, DS3, or OCN capacity circuits, unbundled network elements, shared port adaptors and interface processors, or Ethernet service. For purposes of this subsection, a "commercial customer" shall mean any non-residential customer or applicant for service for any office, store, factory, or other such location where commercial transactions or operations are conducted.

(14) Service of all documents on the parties shall be by e-mail, facsimile or hand delivery. An additional copy shall be furnished by hand delivery, overnight mail or U.S. mail if the initial service was by e-mail or facsimile. Filing of all documents with the Commission shall be by hand delivery, overnight mail or any method of electronic filing authorized by the Commission.

(15) The applicability of this rule to the proceeding will be reassessed as factors affecting the complexity of the case, number of issues, or number of parties change during the proceeding.

(16) Once the Prehearing Officer has determined that use of an expedited proceeding is appropriate, nothing in this rule shall

prevent the Prehearing Officer from making a later determination that the case is no longer appropriate for an expedited proceeding based on the number of parties, number of issues or the complexity of the issues. Nothing in this rule shall prevent the Commission from initiating an expedited proceeding on its own motion.

Rulemaking Authority 350.127(2), 364.16(6) FS. Law Implemented 364.16(6) FS. History—New 8-19-04.