

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
ORDER NO. PSC-12-0528-NOR-TX
ISSUED: October 3, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF DEVELOPMENT OF RULEMAKING

BY THE COMMISSION:

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission has granted the petition of Competitive Carriers of the South, Inc., (CompSouth) to initiate rulemaking to amend Rule 25-22.0365, Florida Administrative Code, relating to the expedited process for resolving disputes between telecommunications companies.

The attached Notice of Development of Rulemaking appeared in the October 3, 2012 edition of the Florida Administrative Register.

A staff rule development workshop will be held at the following time and place:

November 15, 2012, at 9:30 a.m.
Florida Public Service Commission
Betty Easley Conference Center, Room 148
4075 Esplanade Way
Tallahassee, FL 32399-0850

A copy of the draft amendments to Rule 25-22.0365, as suggested by CompSouth, and the agenda for the workshop are attached. One or more Commissioners may be in attendance and participate in the workshop. The person to be contacted regarding the rule development is Kathryn G. W. Cowdery, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850 at (850) 413-6216, kcowdery@psc.state.fl.us.

In accordance with the Americans with Disabilities Act, persons requiring a special accommodation to participate at this workshop should contact the Office of Commission Clerk no later than five days prior to the workshop at 2540 Shumard Oak Boulevard., Tallahassee,

DOCUMENT NUMBER-DATE

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Florida 32399-0850, via 1-800-955-8770 (Voice) or 1-800-955-8771 (TDD), Florida Relay Service.

By ORDER of the Florida Public Service Commission this 3rd day of October, 2012.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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FLORIDA PUBLIC SERVICE COMMISSION

AGENDA

STAFF WORKSHOP

IN RE: Petition to initiate rulemaking to amend Rule 25-22.0365, F.A.C.,
by Competitive Carriers of the South, Inc.

Docket No. 120208-TX

November 15, 2012, 9:30 a.m.
Betty Easley Conference Center, Room 148
4075 Esplanade Way
Tallahassee, Florida 32399-0850

1. Competitive Carriers of the South, Inc., overview of its suggested changes to Rule 25-22.0365, Florida Administrative Code
2. Discussion
3. Time frame for next steps
4. Adjournment

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Notice of Development of Rulemaking

PUBLIC SERVICE COMMISSION

RULE NO.: RULE TITLE:

25-22.0365: Expedited Dispute Resolution Process for Telecommunications Companies

PURPOSE AND EFFECT: The purpose of this rulemaking is to address the Petition to Initiate Rulemaking to amend Rule 25-22.0365, F.A.C., filed by Competitive Carriers of the South, Inc.

Docket No. 120208-TX

SUBJECT AREA TO BE ADDRESSED: The expedited process for resolution of disputes between telecommunications companies

RULEMAKING AUTHORITY: 350.127(2), 364.16(6), F.S

LAW IMPLEMENTED: 364.16(6), F.S.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: November 15, 2012, at 9:30 a.m.

PLACE: Florida Public Service Commission, Betty Easley Conference Center, Room 148, 4075 Esplanade Way, Tallahassee, Florida 32399-0850. One or more Commissioners may be in attendance and participate in the workshop.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Kathryn G.W. Cowdery, Florida Public Service Commission, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6216, kcowdery@fl.psc.state.us. The agenda for the workshop and a copy of the preliminary draft of the rule amendment proposed by Competitive Carriers of the South, Inc., will be available on the Commission's website, www.floridapsc.com, and in this docket after November 1, 2012.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

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1 **25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.**

2 (1) The purpose of this rule is to establish an expedited process for resolution of
3 disputes between telecommunications companies (“companies”). For purposes of this rule, an
4 “immediate and negative effect on a customer” includes, but is not necessarily limited to, any
5 out-of-service or any impeded service condition which significantly hinders the customer’s
6 ability to utilize the service within design parameters.

7 (2) To be considered for an expedited proceeding, the companies involved in the
8 dispute must have attempted to resolve their dispute informally and are encouraged to follow
9 applicable terms of any agreements between the companies for dispute resolution.

10 (3) To initiate the expedited dispute resolution process, the complainant company must
11 file with the Commission a request for expedited proceeding, direct testimony, and exhibits,
12 and must simultaneously serve the filing on the other company involved in the dispute. The
13 request for expedited proceeding is in lieu of the petition required by Rule 28-106.201, F.A.C.
14 At least seven days prior to filing the request, the companies shall first conduct an informal
15 meeting with the Commission staff for the purpose of discussing the matters in dispute, the
16 positions of the parties, possible resolution of the dispute, any immediate customer-impacting
17 effects from the dispute, any unique or exigent circumstances for the dispute, anticipated
18 discovery needs, and anticipated case schedule. Any agreements resulting from such informal
19 staff meeting will be in writing and, if deemed necessary by staff, approved by the
20 Commission.

21 (4) The request for expedited proceeding must include:

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

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

- 1 (c) The relief requested;
- 2 (d) A statement attesting to the fact that the complainant company attempted to resolve
- 3 the dispute informally; and
- 4 (e) An explanation of why the use of this expedited process is appropriate. The
- 5 explanation of why use of the expedited process is appropriate shall include a discussion of the
- 6 following:
- 7 1. The number and complexity of the issues;
- 8 2. The policy implications that resolution of the dispute is expected to have, if any;
- 9 3. The topics on which the company plans to conduct discovery, including a
- 10 description of the nature and quantity of information expected to be exchanged;
- 11 4. The specific measures taken to resolve the dispute informally; and
- 12 5. Any other matter the company believes relevant to determining whether the dispute
- 13 is one suited for an expedited proceeding.
- 14 (5) Any petition for intervention shall provide the information required by paragraphs
- 15 (4)(a)-(c) and (e) as it applies to the intervener.
- 16 (6) The request for expedited proceeding shall be dismissed if it does not substantially
- 17 comply with the requirements of subsections (2), (3) and (4), above. The first dismissal shall
- 18 be without prejudice.
- 19 (7) The respondent company may file a response to the request. The response must be
- 20 filed within 14 days of the filing of the request for expedited proceeding.
- 21 (a) The response shall include the name, address, telephone number, facsimile number
- 22 and e-mail address of the respondent and the respondent's representative to be served, if
- 23 different from the respondent.
- 24 (b) The response to the request may include any information that the company believes
- 25 will help the Prehearing Officer decide whether use of the expedited dispute resolution process

1 is appropriate. Such information includes, but is not limited to:

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

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

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

6 (8) No sooner than 14 days after the filing of the request for expedited proceeding, but
7 promptly thereafter, the Prehearing Officer will decide whether use of the expedited
8 proceeding is appropriate. The decision will be based on the factors provided in Section
9 364.058(3), Florida Statutes, the materials initially filed by the complainant company and, if a
10 response is filed, the materials included in the response.

11 (9) Disputes with an immediate and negative effect on a customer will be scheduled
12 for hearing and disposition as early as the Commission's calendar will accommodate. Unless
13 otherwise provided by an order of the Prehearing Officer, based on the unique circumstances
14 of the case, the schedule for all other each expedited cases ease will be as follows:

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

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

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

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

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

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

1 the record, and the presence of any immediate and negative effects on a customer.

2 (11) The Commission shall make a decision on the dispute within 120 days of the
3 complainant company's filing of the request for expedited proceeding, direct testimony and
4 exhibits. Cases involving an immediate and negative effect on a customer will be scheduled
5 for hearing and disposition as soon as the Commission's calendar will accommodate, with a
6 goal of a vote on a final Commission decision within - days of the initial dispute filing,
7 even if meeting this goal requires a bench decision and assignment to a panel of two or more
8 commissioners.

9 (12) Responses to discovery requests shall be made within 15 days of service of the
10 discovery requests, unless the Prehearing Officer decides otherwise based on the presence of
11 any immediate and negative effects on a customer or the unique circumstances of the case.

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

17 (14) The applicability of this rule to the proceeding will be reassessed as factors
18 affecting the complexity of the case, number of issues, ~~or~~ number of parties or immediate and
19 negative effects on a customer change during the proceeding.

20 (15) Once the Prehearing Officer has determined that use of an expedited proceeding is
21 appropriate, nothing in this rule shall prevent the Prehearing Officer from making a later
22 determination that the case is no longer appropriate for an expedited proceeding based on the
23 number of parties, number of issues or the complexity of the issues, or based on the removal
24 of all immediate and negative effects on a customer. Nothing in this rule shall prevent the
25 Commission from initiating an expedited proceeding on its own motion.

1 *Rulemaking Authority 350.127(2), 364.16(6) FS. Law Implemented 364.16(6) FS. History—*

2 *New 8-19-04, amended*

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