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JUN 11 AM 10:42

COMMISSION
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Public Service Commission

June 11, 2004

Ms. Mary Helen Blakeslee
Office of Tourism, Trade, and
Economic Development
Executive Office of the Governor
The Capitol
Tallahassee, FL 32399-0001

SUBJECT: Docket No. 040269-TP- Proposed adoption of rule 25-22.0365, F.A.C., Expedited Hearing

The Commission has determined that the above rule will affect small business. Accordingly, pursuant to Section 120.54(3)(b), Florida Statutes, enclosed is a copy of the Florida Administrative Weekly (FAW) notice for the proposed rule, which will be published in the June 11, 2004 edition of the FAW. Also enclosed is a copy of the statement of estimated regulatory costs.

If there are any questions with respect to this rule or the Commission's rulemaking procedures, please do not hesitate to call me at 413-6230.

Sincerely,

Marlene K. Stern

Marlene K. Stern
Associate General Counsel

- CMP _____
- COM _____
- CTR _____
- ECR _____ Enclosures
- GCL _____ cc: Division of the Commission Clerk and Administrative Services
- OPC _____
- MMS _____
- RCA _____
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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040269-TP

RULE TITLE:

RULE NO:

Expedited Dispute Resolution Process for Telecommunications Companies

25-22.0365

PURPOSE AND EFFECT: The purpose of the rule is to implement a process designed to minimize the time necessary to reach a decision on a dispute between telecommunications companies pursuant to Section 364.058(3), Florida Statutes.

SUMMARY: The rule provides for an expedited process to facilitate the quick resolution of disputes between telecommunications companies. For any proceeding conducted pursuant to the expedited process, the Commission shall make its determination within 120 days after a petition is filed or a motion is made.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The proposed rule should make the dispute process more efficient and less time consuming, and thus less costly for utilities. It should also facilitate more competitive choices for customers. The Commission would benefit by the resolution of disputes in a more timely manner, but staff's workload may be heavier given the requirement to complete the hearing process in 120 days. The total cost savings are unknown.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 364.058(3), FS

LAW IMPLEMENTED: 364.058, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

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 THESE PROPOSED RULE IS:

Marlene Stern, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6230.

THE FULL TEXT OF THE PROPOSED RULE IS:

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.

(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, Florida Administrative Code.

(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 paragraphs (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 (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 factors provided in Section 364.058(3), Florida Statutes, the materials initially filed by the complainant company and, if a response is filed, the materials included in the response.

(9) 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.

(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) 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.

(14) 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.

(15) 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.

Specific Authority: 350.127(2), 364.058(3), F.S.,

Law Implemented: 364.058, F.S.

History: New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rick Wright

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: June 1, 2004.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 30,
Number 10, March 5, 2004.



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: May 4, 2004
TO: Office of General Counsel (Stem)
FROM: Division of Economic Regulation (Hewitt) *BA* *JOS*
RE: Revised Statement of Estimated Regulatory Costs for Proposed Rule 25-22.0365, F.A.C., Expedited Dispute Resolution Process for Telecommunications Companies

SUMMARY OF THE RULE

The Proposed Rule 25-22.0365, F.A.C., Expedited Dispute Resolution, would implement Section 364.058(3), Florida Statutes and establish an abbreviated procedure to facilitate the quick resolution of disputes between telecommunications companies. The proposed rule would provide that the Commission make its determination within 120 days in any dispute proceeding conducted under the expedited process.

The proposed rule should make the dispute process more efficient because the petitioning company must file a more detailed request than is currently required upfront which should reduce the need for additional discovery. The expedited process should help competition by resolving disputes more quickly and be less costly for smaller companies and their customers.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

There are many telecommunications companies certified by the Commission that may have disputes and would benefit from an expedited process. There are 10 incumbent local exchange companies, 44 alternative access vendors with competitive local exchange authority, 444 competitive local exchange companies, and 585 interexchange companies currently active.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Commission staff would benefit because disputes would be resolved in a more timely manner. However, workload during the expedited dispute resolution process may be heavier due to the compressed time frame, possibly requiring adjustment in timing for other workload responsibilities. The 120 day limit would be met by existing staff.

There should be no negative impact on other state and local government entities.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Telecommunications companies currently litigate disputes before the Commission and incur costs in doing so. The proposed rule would compress the time frame for the process and should decrease the cost by some unknown amount. There may be some negative impact on any company that uses the dispute process to block competition but competition would benefit by the improved dispute process.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a benefit to the companies wishing to compete with no negative impacts on unregulated small businesses, small cities, or small counties. The Commission would benefit by the streamlined dispute process, but may have workload pressure to complete the process in the timeframe allowed. The net benefit from the proposed rule is unknown.

cc: Mary Andrews Bane
Rick Wright
Hurd Reeves