BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition to initiate rulemaking to adopt new rule in Chapter 25-24, F.A.C., amend and repeal Rules in Chapter 25-4, F.A.C., and amend rules in Chapter 25-9, F.A.C., by Verizon Florida LLC, BellSouth Telecommunications, Inc. d/b/a AT&T Florida, Embarq Florida, Inc., Quincy Telephone Company d/b/a TDS Telecom, and Windstream Florida, Inc.	DOCKET NO. 080159-TP FILED: 6-20-08

Petitioners' Post-Workshop Comments

Verizon Florida LLC, BellSouth Telecommunications, Inc., d/b/a AT&T Florida, Embarq Florida, Inc., Quincy Telephone Company d/b/a/ TDS Telecom, and Windstream Florida, Inc. (collectively, the "Petitioners") submit these Post-Workshop Comments.

I. Introduction

Staff and the parties made substantial progress at the May 14, 2008, workshop in this docket by reaching what appeared to be consensus that a number of rules should be revised or eliminated and by laying the groundwork for consideration of the remaining rules.

Of the 72 rules included in Attachments B (rules that should not apply in competitive markets) and C (obsolete rules) that Staff prepared and distributed at the workshop, there appeared to be consensus regarding 25 rules. There was no substantial objection to changing or removing several rules identified by the Petitioners,[1] to accepting a number of suggestions Staff

[1] These rules include 25-4.006, F.A.C., Issuance of Certificate in the Event of Failure to Furnish Adequate Service; 25-4.007, F.A.C., Reference to Commission; 25-4.024, F.A.C., Held Applications for Service; 25-4.039, F.A.C., Traffic; 25-4.079, F.A.C., Hearing/Speech Impaired Persons; and 25-4.116, F.A.C., Telephone Number Assignment Procedures.

made concerning the Petitioners' proposals,[2] or to making other revisions or deletions proposed by Staff.[3] Of the remaining 47 rules in Attachments B and C, the Petitioners support almost all of the proposed changes and it appears CompSouth does also. (T. 149-50).[4] Even the parties expressing more concerns – the Attorney General, Office of Public Counsel ("OPC") and AARP – mostly targeted rules relating to service quality. Staff expressed no opinion on many of the remaining rules because they wanted to consider the parties' comments before reaching a conclusion. (T. 63-64). Thus, it appears there may be room to make substantially more progress.

The Petitioners address several outstanding issues below. First, we discuss why the extensive competition in Florida justifies the elimination or revision of many of the rules listed in Attachment B and, in particular, why competition will do a better job than regulation in producing optimal service quality. Second, we address comments on certain rules in Attachment B on which consensus was not reached. Third, we discuss the competition test and respond to a number of questions raised by Staff at the workshop. Fourth, we address issues that were raised concerning some of the rules in Attachment C.

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[2] These rules include 25-4.017, F.A.C., Uniform System of Accounts; 25-4.0174, F.A.C., Uniform System and Classification of Accounts – Depreciation; 25-4.0175, F.A.C., Depreciation for Rate-of-Return Regulated Local Exchange Companies; 25-4.0178, F.A.C., Retirement Units; 25-4.040, F.A.C., Telephone Directories; Directory Assistance; 25-4.214, F.A.C., Tariff Filings; 25-4.215, F.A.C., Limited Scope Proceedings; 25-9.044, F.A.C., Change of Ownership; 25-9.045, F.A.C., Withdrawal of Tariffs; 25-14.001, F.A.C., In General; 25-14.004, F.A.C., Effect of Parent Debt on Federal Corporate Income Tax; 25-14.010, F.A.C., Accounting for Deferred Taxed from Intercompany Profits; 25-14.011, F.A.C., Procedures for Processing Ruling Requests to be Filed with the Internal Revenue Service; 25-14.012, F.A.C., Accounting for Postretirement Benefits Other Than Pensions; 25-14.013, F.A.C., Accounting for Deferred Income Taxes Under SFAS 109; and 25-14.014, F.A.C., Accounting for Asset Retirement Obligations Under SFAS 143.

[3] The Petitioners do not object to Staff's proposed revisions to or deletions of the following rules: 25-4.003, F.A.C., Definitions; 25-4.021, F.A.C., System Maps and Records; and 25-4.077, F.A.C., Metering and Recording Equipment.

[4] CompSouth, however, would have whatever changes are made to the rules in Attachment B apply across the board, rather than just in markets determined by the Commission to be competitive.

II. The Competitive Environment

A. Regulatory Symmetry in Competitive Markets is Essential to Ensuring Competition that Benefits Customers

The traditional rationale for extensive regulation of local telecommunications providers is that they have captive markets and therefore lack the incentive to provide high quality service and competitive terms and conditions. As discussed in the Joint Petition, in NERA's March 2008 report and by Dr. William Taylor at the workshop, the traditional rationale for extensive regulation does not hold true today. Florida's telecommunications market is now highly competitive, giving consumers many options for local service and requiring incumbent local exchange carriers ("ILECs") to compete for every customer. For that reason, the Petitioners asked the Commission to revise or eliminate a number of rules in Attachment B.[5] Petitioners also requested the deletion or modification of several obsolete rules in Attachment C.

Making the changes the Petitioners request will serve the public interest. In regulating local carriers, the Commission has had to predict what service quality and what service terms and conditions customers would seek (and be willing to pay for) in a hypothetical competitive environment. Now that competition has arrived, consumers can make those decisions for themselves. Putting consumers in the driver's seat will move service, terms and conditions to optimal levels based on actual consumer demand, as opposed to levels the Commission predicts consumers would want. Moreover, today's extensive regulations are harmful because they apply only to ILECs, but not to others competing to provide voice service, which imposes greater costs on ILECs than their competitors and gives ILECs less flexibility in responding to market conditions. Asymmetrical regulation thus impairs ILECs' ability to compete with services and prices that customers value and ultimately harms consumers.

[5] The focus of the Joint Petition is retail services only, and there is no intention to change wholesale service requirements.

In short, most of the current asymmetrical rules were enacted long before the advent of intermodal competition and thus were not designed with today's competitive telecommunications environment in mind. NERA, *Intermodal Competition in Florida Telecommunications*, March 2008, p. 72. To avoid potential harm to the communications market and the state's economy, these outdated regulations – which impose costs and unintended consequences, but provide little or no benefit not better supplied by competition – should be updated and streamlined. *Id.*

B. Service Quality Rules are Not Needed in Competitive Markets

Competitive markets drive service quality just as they drive price. Just as no firm in a competitive market can raise prices above competitive levels without losing customers, no firm can provide subpar service quality without losing customers. (T. 103-04). Until now, the Commission has operated on the assumption that competition does not motivate ILECs to provide good service quality and has maintained service quality objectives without knowing the costs and benefits of modifying those objectives. (T. 104). That approach is harmful in today's competitive environment because unregulated companies are free to determine the optimal level of service quality based on market demand, while ILECs must seek to achieve regulatory service quality levels that may exceed optimal levels. The result is that regulated carriers may be required to bear greater costs to provide marginally better service quality that customers do not value and for which they are not willing to pay. Removing such rules in competitive markets will eliminate that disparity while ensuring that ILECs face market pressures that prevent them from providing service quality below the level that consumers want.

Market experience demonstrates that firms have ample incentive to satisfy customers without Commission-imposed service quality objectives. For example, as explained in the Joint Petition and the NERA Report, a significant percentage of customers have left the ILECs and

now obtain their local service from unregulated providers such as cable companies, wireless carriers and Voice over Internet Protocol ("VoIP") providers. These providers are not subject to the Commission's service objectives, but that has not stopped them from offering a level of service that has attracted and apparently satisfied many customers. Wireless competition in particular shows how service quality improves to meet customers' expectations in an unregulated environment. Because of competitive pressures, wireless coverage and service quality have steadily improved over the years as each carrier has battled for customers. Wireless carriers have made service quality a centerpiece of their advertising campaigns as they have debated which carrier provides the best service. As a result of competition, wireless service quality has improved to the point that nationally one out of six households has cut the cord and now obtains service exclusively from a wireless carrier. The Commission, therefore, can be confident that once service objectives are removed for ILECs, market pressures will force them to continue to provide excellent service to their customers.

AARP asserted that quality of service rules should not be eliminated for the Petitioners because AARP was not aware of any plans that would "provide unlimited local calling at costs that are equivalent to what the ILECs charge now . . . ." (T. 60). The Attorney General also expressed concerns about the cost of telephone service. (T. 61). Neither AARP nor the Attorney General provided evidence to support their arguments, and both ignored the overwhelming evidence in the Joint Petition that Florida consumers have an array of choices in local service providers. Moreover, the Petitioners are not seeking any changes to current basic service price caps for companies that elected price regulation under section 364.051, F.S. Therefore, streamlined regulation will not affect prices to customers and the concerns raised by AARP and

the Attorney General do not provide a basis to maintain asymmetrical and unnecessary service quality rules.

C. Further Explanation on Specific Rules that are Inapplicable in a Competitive Market

For the reasons explained above, the rules in Attachment B should not be applied in competitive markets because the Commission can rely on the market to discipline behavior and because such asymmetrical regulation distorts competition by favoring unregulated carriers. The Petitioners offer the following additional comments to address questions and concerns raised at the workshop about certain rules in Attachment B:

25-4.0201 Audit Access to Records: Staff suggested this rule might be necessary because it provides more procedural details than section 364.183, F.S., regarding the conduct of audits. (T. 72-73). In fact, however, Rule 25-4.0201, F.A.C., adds little substance to the statute. Section 364.183, F.S., provides the Commission with broad authority to obtain records by specifying, "The commission shall have access to *all records* of a telecommunications company that are reasonably necessary for the disposition of matters within the commission's jurisdiction." Section 364.183(1), F.S. (emphasis added). The statute specifies that the FPSC shall have access to the records of a company's affiliated companies and can request that the company "file records, reports or other data directly related to matters within the commission's jurisdiction in the form specified by the commission . . . ." *Id.* In other words, carriers are required to provide whatever the Commission requests and in the form specified. The statute also provides that certain documents shall be kept confidential. *Id.* In short, the rule is unnecessary because the statute provides all the direction that is necessary for conducting audits. If Staff wants to outline in greater detail the process to be used for an audit, it could be described

in the letters sent to companies initiating an audit or could be added to Staff's Administrative Procedures Manual.

25-4.023 Report on Interruptions: Staff asked for clarification as to what the Federal Communications Commission ("FCC") requires regarding interruption reports. (T. 76). FCC regulations specify that wireline communications providers must electronically notify the FCC within 120 minutes of discovering an outage of more than 30 minutes that: "(1) Potentially affects at least 900,000 user minutes of either telephony or paging; (2) Affects at least 1,350 DS3 minutes; (3) Potentially affects any special offices and facilities . . .; or (4) Potentially affects a 911 special facility . . . ." 47 C.F.R. § 4.9(f). The report must include the following information: "[1] [t]he name of the reporting entity; [2] the date and time of onset of the outage; [3] a brief description of the problem; [4] service effects; [5] the geographic area affected by the outage; and [6] a contact name and telephone number . . . ." 47 C.F.R. § 4.11.

25-4.072 Transmission Requirements: Staff asked if forums still exist to establish standards regarding transmission requirements. (T. 168). The Petitioners are aware of several such forums, including but not limited to the following committees and forums of the Alliance for Telecommunications Industry Solutions ("ATIS"): Bar Code/Standard Coding; Emergency Services Interconnection Forum; Information and Data Security Committee; International Forum for ANSI-41 Standards Technology; IPTV Interoperability Forum; Internetwork Interoperability Test Coordination Committee; Industry Numbering Committee; IMSI Oversight Council; Interactive Voice Response Forum; Network Interconnection Interoperability Forum; Network Interface, Power and Protection Committee; Network Reliability Steering Committee; Committee 05 – Wood Poles; Ordering and Billing Forum; Optical Transport and Synchronization Committee; Network Performance, Reliability and Quality of Service

Committee; Packet Technologies and Systems Committee; Telecommunications Fraud Prevention Committee; Telecom Management and Operations Committee; Text Telephone Forum; and Wireless Technologies and Systems Committee. More information on the ATIS committees is available at www.atis.org. Given the activities of these committees, state rules on transmission quality are not needed.

25-4.083 Preferred Carrier Freeze: Workshop participants and Staff discussed what the FCC rule requires regarding a preferred carrier freeze and whether other states had rules mirroring the FCC's rule. (T. 171-75). The FCC's detailed regulations state as follows:

> (a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.
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> (b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.
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> (c) Preferred carrier freeze procedures including any solicitation must clearly distinguish among telecommunications services . . . subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.
>
> (d) *Solicitation and imposition of preferred carrier freezes.* (1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:
> (i) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;
> (ii) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the [FCC's] verification rules . . .; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze.
> (iii) An explanation of any charges associated with the preferred carrier freeze.
>
> (2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:
> (i) The local exchange carrier has obtained the subscriber's written or electronically signed authorization . . . ; or

(ii) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. . . .; or
(iii) An appropriately qualified third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data . . . .

(3) *Written authorization to impose a preferred carrier freeze.* A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. . . .
(i) The written authorization shall comply with . . . the Commission's rules concerning the form and content for letters of agency.
(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:
(A) The subscriber's billing name and address and the telephone numbers(s) to be covered by the preferred carrier freeze;
(B) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections . . . the authorization must contain separate statements regarding the particular selections to be frozen;
(C) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and
(D) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) *Procedures for lifting preferred carrier freezes.* All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:
(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred carrier freeze; and
(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. . . .

47 C.F.R. § 64.1190. Because the FCC's rule goes into great detail as to what is required, an additional state level rule is not needed, as apparently recognized by the majority of states that do not have their own rules regarding preferred carrier freezes. Because the statute requires the

Commission to adopt rules, the Commission should incorporate by reference the FCC rule and note that a preferred carrier freeze must be established at no charge.

25-4.107 Information to Customers: Staff asked how a customer would obtain information on the least expensive single line charge without this rule. (T. 178-79). This rule is not needed because section 364.3382(1), F.S., requires the ILEC, when a residential customer initially requests service, to "advise each residential customer of the least-cost service available to that customer."

25-4.109 Customer Deposits: Staff asked Petitioners about any specific objections to a particular provision of this rule and whether Petitioners had a transition plan in place if the rule was made inapplicable in competitive markets. (T. 179-80). Petitioners do not have any specific objections, but believe in general that this rule is not needed and customer deposits should be governed by tariffs rather than by rule. Because some of the Petitioners currently collect deposits, these companies would need to work with Staff on a transition plan to move from rule to tariffs.

25-4.110 Customer Billing for Local Exchange Telecommunications Companies: Discussion on this issue centered on the extent to which the FCC's requirements are consistent with and address the requirements of section 364.604, F.S. (T. 182-86). Together, the FCC's rule and section 364.604, F.S., adequately address customer billing such that a separate state rule is not needed.[6] In response to Staff's questions, the following chart compares section 364.604, F.S., and the FCC rule:

[6] Indeed, many states now have rules that simply refer to the FCC's rule, that mirror the FCC's rule, or that have only minimal additional requirements.

Section 364.604	47 C.F.R. §64.2401
Bills must clearly identify the name of the originating party.	Bills must include the name of the service provider clearly and conspicuously identified.
Bills must include toll-free number of the originating party and the number must be answered by a representative or voice response unit, with response within 24 hours.	Toll-free number must be prominently displayed on each bill by which subscribers may inquire or dispute any charges. The number can be for a billing agent, clearinghouse or other third party, provided such party possesses information to answer questions regarding the account and is authorized to resolve the customer's complaint.
Bills must include the service billed.	Charges on the bills must be accompanied by a brief, clear non-misleading, plain language description of the services rendered. The description must be clear and specific so customers can accurately assess the services for which they are billed and the costs for those services.
Bills must include the specific charges, taxes and fees for each service.	Charges on the bill must be accompanied by a brief, clear non-misleading, plain language description of the services rendered. The description must be clear and specific so customers can accurately assess the services for which they are billed and the costs for those services.
Originating party is responsible for providing all required information.	The rule applies to telecommunications common carriers, unless otherwise exempted.
Customer shall not be liable for any charges for services the customer did not order or that were not provided.	The description of charges must be clear and specific so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price changes.
Every billing party shall provide a free blocking option to a customer to block 900 or 976 calls.	
A customer's Lifeline local service shall not be disconnected if basic service is paid.	The bill must distinguish between the charges for non-payment which will result in disconnection of basic, local service and charges for which non-payment will not result in such disconnection.

The Commission rule not only adds another unnecessary level of regulation, but also results in unduly lengthy and complex bills, which can be confusing to customers. Further, the ILECs' competitors do not have to comply with this rule, giving them the competitive advantage of a more understandable and straightforward bill.

25-4.114 Refunds: Because this rule is only applicable when the Commission orders a refund, the Petitioners do not object to leaving it in place and are agreeable to removing it from the list of rules in Attachment A.

25-4.117 800 Service: At the workshop, Staff asked if the ILECs would bill for 800 service if this rule did not apply. (T. 188). Participants also discussed whether FCC regulations precluded such billing. (T. 188-89). The FCC defines a "Toll Free Number" as "[a] telephone number for which the toll charges for completed calls are paid by the toll free subscriber. The toll free subscriber's specific geographic location has no bearing on what toll free number it can obtain from the SMS [Service Management System] database." 47 C.F.R. § 52.101(d). Federal law therefore prohibits billing to the originating caller for toll free numbers such as 800, 888 and 877 and no state rule is required to prevent such billing.

25-4.210 Service Evaluations and Investigations: The Petitioners were asked why they would want this rule to be inapplicable given that it limits evaluations and investigations by Staff. (T. 189-90). The Petitioners' proposal was based on the assumption that the service quality rules would no longer apply. However, if some or all of the service quality rules continue to apply in competitive markets, the rule should remain.

25-9.005 Information to Accompany Filings: If service rules remain applicable, this rule also should be kept. Because this rule is not consistent with the price cap order and the tariffs filed today, the Petitioners request a clarification from Staff that subsection (3)(b) of this rule, which involves rate changes accompanied by cost studies, does not apply to price cap regulated telecommunications companies.

III. The Competition Test

A. The Commission has Authority to Adopt the Proposed Competition Test

The Commission has ample authority to adopt the proposed competition test, which would make the rules in Attachment B inapplicable in competitive markets. Existing statutes give the Commission clear authority to "encourage competition through flexible regulatory treatment," "[e]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint" and "[r]ecognize the continuing emergence of a competitive telecommunications environment through the regulatory treatment of competitive telecommunications services." Section 364.01(4), F.S. The streamlined regulation the Petitioners propose recognizes the continuing emergence of competition and provides the necessary flexible regulatory treatment to ensure telecommunications companies in competitive markets are treated fairly, thus facilitating competition that benefits consumers. Although the Petitioners propose that the Commission adopt a new rule, that rule would, in effect, limit the applicability of other existing rules. Instead of adopting a new rule, the Commission could simply add language to each of the Attachment B rules to describe circumstances under which the rule would not apply. The new rule simply is a more administratively efficient alternative. Moreover, since the Commission could repeal the rules in Attachment B completely for all companies, the Commission is also necessarily authorized to take a lesser or intermediate step – that of "repealing" those same rules only in particular circumstances (namely, in competitive markets).

B. The Proposed Test is Objective and Easy to Apply

The competition test proposed by the Petitioners is an objective and easy-to-apply mechanism by which FPSC Staff can evaluate the market in which the Petitioners operate to

determine whether competition is sufficient to discipline providers and to ensure that no single competitor can exercise market power to the detriment of customers. The rule provides a bright-line test based on readily verifiable data using objective criteria. These attributes will allow Staff to assess compliance with the rule in a reasonable time period. At the same time, the rule provides companies the appropriate flexibility to propose the market within which the prescribed criteria should apply. As was mentioned at the workshop, other states have used similar competition tests to determine that reduction or elimination of traditional regulation was warranted. (T. 101-02, 141-43).

C. Clarifications Regarding the Proposed Test

A number of questions arose during the workshop concerning the implementation of the proposed test. Petitioners respond to these questions as follows:

First, the test criteria refer only to residential service, regardless of whether the specific reference is to households or to access lines. Petitioners propose this approach because if there is competition in the residential market, then business services will be at least as competitive as residential services.

Second, subsection (1)(a) of the proposed rule specifies several options for defining the market in question and allows a company to propose another option not listed in the rule. This flexibility is necessary because each company is different, with a different mix of rural and urban territories. As the Petitioners noted at the workshop, they have not yet finally determined how they would define each of their markets when requesting streamlined regulation.

Third, subsection (1)(b) of the proposed rule defines "local service access alternatives" to include wireline, wireless, broadband and cable. It also includes other technology "approved by the Commission," to allow new and developing technologies to be counted, with the approval of

the FPSC. To clarify, the rule would count the ILEC as one alternative. An affiliated wireless company also would count as one alternative. A wireless affiliate competes across the national market and competes with the wireline company as well as with unaffiliated carriers, so its inclusion is appropriate. In addition, if a wireline customer opts to "cut the cord" and use only a wireless provider, there is no guarantee that the customer will use the wireless company affiliated with his or her former wireline carrier. Although a broadband connection itself is not telecommunications service, it should count as an alternative because the broadband connection would allow a provider (*e.g.*, an ILEC, a cable company or Vonage) to offer competing voice service. However, Petitioners do not intend for the rule to count separately digital subscriber line ("DSL") service when it is bundled with the ILEC's telecommunications service.

D. Rollback of Streamlined Regulation

Streamlined regulation should not be subject to rollback if the competition level in the market changes. Once it has been established that consumer demand in a market has attracted sufficient competition, the Commission can be confident that, even if there are temporary setbacks, over the long term the market will remain competitive. Moreover, some competitors are unlikely to withdraw from a market because of the investment in infrastructure required to enter a market in the first place. Finally, the Commission retains its authority to change or repeal any rule it has adopted, including any rule implementing streamlined regulation, so the Commission could revise the rule in the highly unlikely event that dramatic changes in the market warranted such a modification.

E. Implementation of the Proposed Rule

Staff raised questions about implementation of the rule, including the 45-day deadline for a decision, how to extend that deadline and the level of detail the Commission would have to

provide in denying an application for streamlined regulation. (T. 133-39). With respect to the 45-day deadline, Petitioners sought to ensure that the Commission would make its determination in a timely manner, given the fast-paced competitive environment in which the Petitioners now operate. Toward that end, the rule would require that a company requesting a determination must provide with its application sufficient information to allow Staff to make a recommendation in a short time. In any event, Petitioners are willing to discuss a provision that would allow a one-time reasonable extension of the 45-day deadline. Finally, the requirement in (3)(c) that the FPSC provide reasons for a denial would inform the company how its request was deficient so it could address those concerns when it filed its next application.

IV. Rules Requiring Additional Discussion

Although it appeared that consensus was reached on many of the rules in Attachment C at the workshop, issues remained on a few of the rules, which are discussed below:

25-4.002 Application and Scope: The Petitioners understand that, in practice, the regulatory assessment fee rule has not been limited to residential services and they do not object to clarifying that the rule also applies to business services. (The Petitioners would support a change in the regulatory assessment fee in the future given that the need for regulation in the telecommunications industry continues to decrease). However, the Petitioners oppose extending the other regulations in this provision to business services. These regulations have been limited so as not to apply to business services and should not be reapplied to burden this most highly competitive segment of the market. Currently, the following rules apply to residential, not business, services: 25-4.0185, F.A.C., Periodic Reports; 25-4.022, F.A.C., Complaint – Trouble Reports, Etc.; 25-4.024, F.A.C., Held Applications for Service; 25-4.0665, F.A.C., Lifeline Service; 25-4.067, F.A.C., Extension of Facilities – Contribution in Aid of Construction; 25-

4.070, F.A.C., Customer Trouble Reports; 25-4.071, F.A.C., Adequacy of Service; and 25-4.073, F.A.C., Answering Time. Those rules should remain applicable only to residential service if they are retained.[7]

25-4.019 Records and Reports in General: This rule should be deleted in its entirety because it adds little to sections 364.18, 364.183 and 364.185, F.S, with which the Petitioners would continue to comply. If the rule were deleted, the Petitioners still would make every effort to provide Staff with a comfortable area in which to conduct its inspections.

25-4.022 Complaint – Trouble Reports: At the workshop, OPC stated that all "complaints," regardless of the means by which they were transmitted to a company, should be kept in accordance with this rule and expressed concern that the proposed rule revision would require only signed, written complaints to be maintained and tracked by a company. (T. 22-25). This concern appears to be based on a misunderstanding of the purpose of the rule change and about the Petitioners' current practices. This rule focuses on the requirements associated with maintaining signed, written complaints. The Petitioners currently track trouble reports electronically, generally entering them into the notes field on a customer's account or as part of a company's "trouble tracker." The Petitioners also have internal record retention policies requiring this information to be maintained. The proposed rule revision does not mean that the information on trouble reports would not be captured or maintained, but clarifies that the requirements of this rule would apply to signed, written complaints and that other tracking and retention processes would be used for other complaints received.

25-4.034 Tariffs: Staff expressed concerns that if this rule were eliminated, and the FPSC relied only on section 364.04(1), F.S., the ILECs might not continue to provide a copy of

[7] Petitioners have proposed that the Commission delete Rule 25-4.024, F.A.C., and determine that Rules 25-4.0185, 25-4.070, 25-4.071 and 25-4.073, F.A.C., are inapplicable in competitive markets. However, if any or all of the rules remain in place, they should remain applicable to residential services only.

their tariffs to customers upon request. (T. 28). As Petitioners stated at the workshop, they will continue to provide customers with reasonable access to or copies of information regarding their services, including tariffs, if desired. Petitioners have ample incentive to comply with such requests, given the competitive pressures they face.

25-4.046 Incremental Cost Data Submitted by Local Exchange Companies: CompSouth expressed concerns at the workshop regarding the availability of this information if a complaint arises. (T. 42). Section 364.3381, F.S., covers the issue and, even without the rule, Staff can make a request for data and companies must comply. *See* section 364.3381(3), F.S., ("The commission shall have continuing oversight jurisdiction over cross-subsidization, predatory pricing, or other similar anticompetitive behavior and may investigate, upon complaint or its own motion, allegations of such practices."). Thus, if the issue arises, it can be handled appropriately on a complaint basis.

25-4.067 Extension of Facilities – Contributions in Aid of Construction: OPC expressed a concern that Petitioners perhaps intended the proposed revisions to change the basis for line extension charges. (T. 45). OPC would not have a concern, however, if Petitioners intend only to move the existing requirement from a rule to a tariff. (T. 45). To clarify, subsections (3) and (4) are more appropriately covered in tariffs or in published terms and conditions.

Finally, as noted above, Rule 25-4.067, F.A.C., should not be modified to extend it to business customers, which would be a step backward by increasing the current regulation on business services.

25-9.001 Application and Scope: The Petitioners object to Staff's proposed language, which states that only Parts I (Rules 25-9.001, F.A.C., through 25-9.010, F.A.C.) and II (Rules

25-9.020, F.A.C., through 25-9.034, F.A.C.) of Chapter 25-9 apply to ILECs, thereby implying that Part III (Rules 25-9.044, F.A.C., through 25-9.045, F.A.C.) does not. The Petitioners understand that Staff intends to address the Petitioners' proposal regarding Chapter 25-9 in a different way and do not object to eliminating the application of Part III to ILECs. However, three Part II rules – 25-9.028, F.A.C., List of Communities Served; 25-9.033, F.A.C., Standard Forms; and 25-9.034, F.A.C., Contracts and Agreements – do not apply to ILECs. According to the specific authority for each of these rules, they were not implemented under any of the telecommunications statutes, but rather under Chapters 366 and 367. Therefore, this rule should be revised either to state that only Part I shall apply to ILECs (*i.e.*, eliminating both Parts II and III) or Rules 25-9.028, 25-9.033 and 25-9.034, F.A.C., should be revised to state that they do not apply to ILECs.

V. Conclusion

In summary, the Petitioners are encouraged by the apparent consensus reached to date regarding the revision and deletion of many of the rules in question. The Petitioners appreciate the opportunity to provide these comments and look forward to continuing to work with Staff and the other parties to move toward agreement on the remaining outstanding issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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