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.
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Docket No. 080159-TP

Filed: June 20, 2008

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

The Competitive Carriers of the South, Inc. (CompSouth), through its undersigned counsel, files the following Post-Workshop Comments.

I.

INTRODUCTION

On March 14, 2008, a group of the largest incumbent local exchange carriers (ILECs) in Florida filed a petition to initiate rulemaking (ILEC Petition). Together, more than 98% of the access lines in the state are located in the territories of these ILECs.[1] On April 9, 2009, the Commission voted to grant the petition to initiate rulemaking.[2] The Commission issued a Notice of Proposed Rule Development on April 29, 2008. Staff conducted a workshop on May 14, 2008. At the conclusion of the workshop, Staff requested that the parties file comments on the ILEC proposed rule changes.

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[1] 2006 Report on the Status of Competition in the Telecommunications Industry at 25.

[2] Staff correctly advised the Commission in its recommendation that a decision to go to rulemaking is not a decision on the merits of the request: "Staff notes that granting the Petition to Initiate Rulemaking does not mean that the Commission is required to adopt, amend, and/or repeal the rules set forth in the Petition to Initiate Rulemaking. Nor does it mean the Commission will have to adopt the rule language proposed by the Petitioners." Staff Recommendation at 5 (March 27, 2008).

The ILECs ask the Commission to do several things in this docket. First, the ILECs ask the Commission to adopt a totally new rule[3], which would act as a "screening rule" for other rule changes that they seek. When the "screening rule" provides a green light – mistakenly claimed to be a finding that a market is competitive – the ILECs would receive a waiver of a subset of the current telecommunications rules.[4] Second, the ILECs request that another subset of telecommunications rules be amended or repealed without reference to the new screening rule.[5]

In these comments, CompSouth will focus on two key issues. First, CompSouth will address the unreasonableness of the ILECs' screening rule approach. There is no reason for the Commission to adopt a screening rule that claims to tell it when other rules are obsolete. The Commission has the authority and the expertise to determine *directly* in this rulemaking proceeding which rules to modify or eliminate based on the merits of the arguments presented to it. The ILECs' screening rule is nothing more than their position masquerading as an informative procedure. As the ILECs' own economist attests, there is nothing "magical" about the screening rule.[6]

As a screen (which is its function), the proposed rule is unnecessary; as a rule that allegedly determines when a market is competitive (which is what the ILECs claim), the

[3] Attachment A to ILEC Petition.
[4] Attachment B to ILEC Petition.
[5] Attachment C.
[6] When asked to explain one of the key measures in the ILECs' screening rule – that 2/3 of all households have some alternative as defined by the rule – Dr. Taylor explained:

> [T]here is no magic to two-thirds. You know, I think a number above half and less than one is something that one was looking for....Two-thirds isn't a magic number, but it's large and it's between a half and one. That's about the logic that goes with it, I think.

Transcript of workshop, May 14, 2008 (hereinafter Transcript) at 128, l. 6-14.

proposed rule is hopelessly inadequate.[7] In a proceeding requested to eliminate unnecessary rules, it is decidedly ironic that the ILECs have proposed the most unnecessary rule of all.[8]

Second, CompSouth will discuss its particular concerns as to the full set of rules that the Commission should directly consider in this rulemaking. That is, CompSouth will provide its concerns and comments as to *all* the rule changes that Staff and the ILECs have proposed without any artificial separation between rules the ILECs claim are subject to their proposed screening rule and those that are not.[9]

CompSouth's concerns are presented from the perspective of competitors; these comments are not intended to address broader public policy issues which the Office of Public Counsel and AARP will no doubt discuss. CompSouth's focus is on the preservation of the quality of *wholesale* services/elements that the ILECs must offer, so that CompSouth members can continue to provide quality services to retail customers, whether or not the ILECs choose to do so. In addition, it is CompSouth's position that no *substantive* relaxation in the Commission's price floor rules should occur, even if the process by which those tests are applied changes. CompSouth's goal in this proceeding is to constructively inform the Commission as to which rules, in CompSouth's perspective, may be relaxed; it is not to continue regulation over the ILEC retail services against which CompSouth members compete where the rules are not needed.

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[7] Again, Dr. Taylor confirms as much by touting the fact that the rule does not bother with concepts like market power, instead simply "counting noses":

> And the one advantage of this particular rule is that it is a trigger [i.e., screen]. Everything here is observable. It doesn't have strange things like no market power or, you know, arguments like that. It's simply counting noses.

Transcript at 135, l. 2-5

[8] Transcript at 146, l. 18-20.

[9] Although the ILECs propose that the screening rule be applied to the rule changes in Attachment B, they do not agree that the Attachment B rules would be needed in circumstances where the screen fails. Transcript at 67, l. 22-23. In addition, Staff moved several rules from Attachment B to Attachment C (i.e., eliminating the application of the screening rule) without comment from *any* party. Transcript at 148, l. 2-9. Thus, the structural integrity of the screening rule did not even survive the first workshop before it was abandoned.

II.

THE "SCREENING" RULE

CompSouth agrees with the ILECs that the Commission has the statutory authority to revise its rules to clarify and/or simplify them, or to eliminate rules that are obsolete or unnecessary, that add little to the statutes, or that impose an unnecessary burden.[10] Those objectives are the ones that should be accomplished in this proceeding. If there are rules that are no longer necessary because they do not provide information or require action which the Commission, Staff, the Public Counsel or consumers find useful, if there are rules with which compliance is too burdensome to justify their existence, and/or if there are rules that should be clarified so that the rule's requirements are made clear, the Commission and the parties should cooperatively review and agree on revisions to such rules. Proposals for rule modification would then be submitted collaboratively to the Commission for consideration.

Significantly, the ILECs' screening rule – set out in Attachment A to its Petition – conflicts with this rational approach. The basic premise of Attachment A is that a *rule* can tell the Commission which rules are no longer needed, as a *substitute* for the Commission's own review and the collaborative process of rulemaking. Such a notion should be rejected.

As the day-long workshop on May 14th demonstrated, interested parties can *directly* discuss each rule individually, without the need to resort to the proposed screening rule to discern a particular rule's usefulness. Tellingly, when asked point blank whether Verizon was suggesting that it could not obtain relief from the rules set out in the ILEC Petition without adoption of the screening rule, counsel for Verizon said no.[11] Further, when CompSouth made

[10] ILEC Petition at 13, ¶ 28.
[11] Transcript at 67, l. 22.

the point that the best way to proceed was to go through the rules and decide what each rule was designed to accomplish and whether it should be retained,[12] Verizon counsel responded:

> I mean, if there is consensus in the room that whether there's competition or not the rule is not necessary, I think the folks on our side would be happy with that conclusion.... If everyone says it doesn't matter whether there's competition or not for a particular rule, well, so much the better.[13]

While there may not be consensus on every rule in the ILEC Petition, it is not necessary to adopt an entirely new and highly controversial rule to decide which existing rules should be retained, amended, or deleted. This Commission should not adopt what is the ILECs' *position* (that competition makes some rules unnecessary) as a Commission rule. Rather, as each rule is analyzed, each party may state its position and make its argument about the specific rule and have a determination made on a rule-by-rule basis.

As explained below, the adoption of the screening rule is absolutely unnecessary for the Commission to accomplish appropriate rulemaking goals. It will needlessly complicate and expand this proceeding to contentious areas that need not be implicated to revise or amend rules which may be outdated or unnecessary. Although the screening rule is postured as a rule that determines when a market should be subject to Streamlined Regulation, it goes on to claim that it determines whether a market is competitive.[14]

The screening rule is *unnecessary* for its chosen role (to determine what other rules should be revised or deleted), and it is woefully *inadequate* as a vehicle to determine when a "market" is competitive. Further, the mere existence of the screening rule violates the ILECs' own standard for when a rule should be retained:

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[12] Transcript at 68, l. 9-23.
[13] Transcript at 68, l. 25-69, l. 1-3, 7-9.
[14] Specifically, although the ILEC screening rule is *titled* "Determination of Whether a Market Should be Subject to Streamlined Regulation," the *conclusion* it purports to arrive at is that the market is competitive ("A telecommunications company may apply for Streamlined Regulation of a market by showing that the market is competitive.")

> If rules are obsolete, unnecessary or confusing, then they are de facto burdensome and they should be eliminated.[15]

The ILECs' proposed screening rule would immediately qualify for elimination under this standard. It serves no valid purpose and can reach no sound conclusion. Its only purpose is to create confusion and controversy and delay its *stated* purpose, which is a determination of which Commission rules are no longer needed.

A. The Screening Rule is Unnecessary

There should be no argument that the ILECs' petition *arbitrarily* divides the rules into Attachment B (rules to which the proposed screening rule *would* apply) and Attachment C (rules for which amendment or repeal are suggested as needed *without* reference to the screening rule). As a practical matter, there is *no difference* between the rules in the two attachments. This is illustrated by the fact that the Staff, in discussing the rules at the workshop, "moved" several rules from the ILECs' Attachment B to Attachment C[16] without objection from the ILECs or any other party. No one at the workshop suggested that such rules could not be considered for revision or repeal unless the screening rule was adopted first.

Not only did the ILECs not object, but ILEC counsel, Ms. Clark, commented:

> We would, we would be comfortable with that. I think we had it in our streamlined section that it wouldn't apply, but I think it's appropriate not to have it apply to anyone.[17]

Further, Staff itself proposed certain rules for revision or repeal.[18] Again, no party suggested that such action could not be taken in the absence of the screening rule.

[15] Transcript at 5, l. 7-9 (Opening comments of ILEC attorney, Ms. Clark).
[16] Rules 25-4.-21 (systems and maps), 25-4.077 (metering and recording equipment), 25-4.215 (limited scope proceedings).
[17]Transcript at 20, l. 3-6.
[18] Rules 25-4.002 (application and scope), 25-4.003 (definitions), 25-4.215 (limited scope), 25-9.001(application and scope), 25-14.001(in general), 25-4.021 (systems and maps), 25-4.077 (metering and recording equipment).

Second, even the ILEC representatives had a difficult time establishing a link between the screening rule and the rules proposed for change. For example, ILEC witness Dr. Taylor stated:

> [I]t's important to recognize that there are a lot of rules on the list that really have nothing to do with the presence or absence of market power and could be dispensed with irrespective of what we decide, what you decide, staff, Commission, on the state of market power in Florida.[19]

If this is the case, the academic exercise involved in litigating an unnecessary screening rule makes little sense.[20]

B. The Screening Rule Does Not Determine When Markets are Competitive

As noted above, the screening rule's role is to determine when Streamlined Regulation – i.e., fewer rules – is appropriate; but the rule claims to determine when a market is competitive. Because the rule itself is unnecessary, CompSouth will summarize only the most obvious reasons why the rule is inadequate to determine when a market is competitive. Nor will CompSouth propose an alternative rule because the correct path in this docket is simply to directly review each rule, determine which rules should be retained, and eliminate those that are unnecessary. CompSouth does not agree that proposing an unnecessary rule – even if more correctly structured – is a useful addition to this process.

First, even the sponsors of the proposed screening rule freely admit that the rule is not complicated by "strange things" like whether an ILEC has market power:

> And the one advantage of this particular rule is that it is a trigger [i.e., screen]. Everything here is observable. It doesn't have *strange things* like no market power or, you know, arguments like that. It's simply counting noses.[21]

Second, the proposed screening rule does not measure market competitiveness because, among other reasons, it does not bother to determine the boundaries – either by geography,

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[19] Transcript at 106, l. 14-19.

[20] This conclusion would be correct even if the screening rule was a valid measure of some useful parameter, which, as these comments explain, it is not.

[21] Transcript at 135, l. 4, emphasis added.

product or customer type – of any particular market. Rather, the ILEC is free to *choose* whatever "market" it wants, be it Metropolitan Statistical Area, an exchange, the company's service territory, or such other basis it chooses.[22] In other words, the screening rule permits the ILEC to define the "market" to make sure the screen is passed (after all, why would the ILEC select a market boundary that caused the screen to fail). This is not market-definition, or any serious attempt at determining whether a market is competitive. It is regulatory gamesmanship[23] – pure and simple.[24]

It is not surprising that the term "market" in the screening rule is as misleading as its finding of "competition" given that most of the rules to which the screening rule would apply are *company-wide* rules that cannot be tracked to a particular geographic area.[25] For example, rule 25-4.071 is the adequacy of service rule. This rule applies to *all* customers a company serves – it has nothing to do with and is not related to a particular geographic area. The same is true of the other current rules to which the screening rule would be applicable. Dr. Taylor recognized this fact:

> The fact that struck me when I looked at the rules was how many of them only made sense on a company-wide basis; that is, you can't think about changing accounting rules, for example, for particular geographic areas of a company.[26]

The screening rule has nothing to do with geography and, by extension, can have nothing to do with any area, whether labeled a "market" or not.

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[22] Proposed Screening Rule 25-24.xxx (1)(a), Attachment A.

[23] The majority of companies proposing the screen intend to file on a footprint basis (Transcipt at 129, l. 18- 130, l.11), indicating they believe they have met the screen before it is even applied. However, the fact that a company may seek application of the screen on an MSA basis does not mean that it would not get relief statewide. Under the ILECs' approach, once the 2/3 test of the first part of the screen is met in any "market," as defined by the ILEC, "streamlined regulation" applies in *all* markets. *See*, Attachment A to ILECs' Petition. Rule 25-24.xxx (2)(a).

[24] The fact that the proposed rule effectively delegates to the ILEC the authority to determine the "market" is problematic from a rulemaking perspective as well.

[25] Transcript at 148, l. 14-15.

[26] Transcript at 110, l. 5-8.

Moreover, the screening rule does not differentiate between retail residential and retail business customers even though these represent very different markets with very different needs and service availability.[27] While it may be true that many consumers have cellular telephones and that some segments of the residential market (generally younger users) have only cellular telephones, it is certainly *not* the case (as personal experience demonstrates) that business customers have abandoned or intend to abandon land lines for cellular telephones.[28] What retail establishment, attorney's office or state or federal government agency uses only cellular telephones to conduct its business? What bank or restaurant has disconnected its land line and uses only cellular service? As Dr. Taylor admitted:

> [Y]ou would still find that the share of businesses that are exclusively wireless is probably pretty small. The share of businesses who get all of their service, local service, including data form cable is probably comparatively small....[29]

A "one test fits all" approach is fatally flawed -- not only because the ILEC screening rule permits the ILECs to design their "market" to guarantee success, but because it totally ignores real differences in customers and geography.

Even accepting that cable companies are present in many residential markets,[30] their presence does not mean that they are competing to serve business customers. Business customers often need or want TDM[31] service[32] which is not directly compatible with the packet architecture cable companies typically use. In addition, large, multi-state customers need a

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[27] Transcript at 150, l. 7-9.
[28] Transcript at 154, l. 1-6, quote from Ed Whiteacre of SBC.
[29] Transcript at 119, l. 15-18.
[30] Even within the residential market, a "one test fits all" test is not appropriate. Markets must be broken into customer segments. While cable companies may have a foot print to residential subscribers in certain areas, residential subscribers are not all equal. Cable companies are often interested in high end customers who purchase bundled services – they are not always in a position to provide simple residential telephony service on a stand alone basis. Transcript at 150, l. 24-151, l. 4
[31] TDM is time-division multiplexing and is part of the legacy switched network. The next generation of network architecture will be managed packet networks.
[32] Transcript at 151, l. 15-18.

multi-location package.[33] Again, this is not something cable companies are generally positioned to provide to the business market.

To pursue a meaningful test to determine which markets are competitive requires not only an independent review of residential and business markets but a further breakdown into customer segments[34] to determine what a particular group of customers wants. Merely showing that a particular option is available does not mean that there is meaningful competition.

Finally, were the Commission to determine that it desired to pursue a test to gauge the competitiveness of markets, not only would the market segment issues described above have to be included, but the Commission would need to look much more broadly at a myriad of issues that impact competition in this state – on a retail and on a wholesale level. Such issues include, but are not limited to, how interconnection will be accomplished between incumbents and other carriers with the next generation of technology (managed-packet networks), what means are available to ensure reliable and easy interconnection between carriers, and whether the rural exemption should be eliminated for certain carriers. Additional workshops, data collection and analysis would be necessary to fully explore all these issues. In addition, if the Commission were to expand this rulemaking into an inquiry on market competitiveness (which is an issue of needless complexity that the ILECs have attempted to force into this rulemaking), it would be necessary to explore why so many of Florida's markets are *not* competitive and would require that the Commission take action in this rulemaking to correct the lack of competition in such markets.

CompSouth agrees that many of the rules discussed at the May 14th workshop are no longer necessary, while others (such as when cost information must be provided) can be shifted

[33] Transcript at 152, l. 4-5.
[34] Transcript at 153, l. 16-19.

into other rules that more closely track when the information is needed.[35] CompSouth fundamentally disagrees with the ILECs' claim that the Commission should adopt a screening rule with the mystical power of being able to determine when other rules can be eliminated.

C. The Screening Rule Exceeds the Commission's Authority and Is Administratively Burdensome

Beyond the concerns above, it is questionable whether the Commission has the appropriate statutory authority to adopt the proposed screening rule. Chapter 120 strictly limits an agency's rulemaking authority. Section 120.52(8)(f) states:

> A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; *a specific law to be implemented is also required.* An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.[36]

In regard to this language, the First District Court of Appeal recently held: "this language was intended to restrict agency rulemaking."[37] The Legislature has not given the Commission specific statutory authority to adopt, as the ILECs term it, "streamlined regulation" for a

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[35] Specifically, as explained below, CompSouth supports the elimination of the requirement that the ILECs provide cost information when a service is introduced, but *only* if the Commission's rules regarding complaints are amended to clearly require that the ILECs must provide cost information at the time a complaint is filed or an investigation is initiated.
[36] Emphasis supplied.
[37] *Golden West Financial Corp. v. Florida Dept. of Revenue*, 975 So.2d 567, 571 (Fla. 1st DCA 2008), citation omitted. In *Board of Internal Trustees of the Internal Improvement Fund v. Day Cruise Association, Inc.*, 794 So.2d 696, 699 (Fla. 1st DCA 2001), the Court said that the purpose of the 1999 amendments to Chapter 120 was "to clarify the limited authority of agencies to adopt rules...." Ms. Clark recognized the "strict requirements" that are applicable when new rules are proposed. Transcript at 143, l. 21-25.

particular class[38] of companies.[39] However, it is not necessary to reach this issue to revise or repeal particular rules.

Finally, not only is the ILEC-proposed screening rule substantively flawed and legally suspect, it is procedurally unworkable for the Commission, the Staff, and substantially affected parties. For example, the proposed rule would require the Commission to grant or deny an "application" within *45 days* of filing.[40] This compressed schedule leaves insufficient time for intervention or discovery let alone the comprehensive data analysis that would be required of Staff and interested parties to review and/or independently verify the ILECs' claims.

The proposed rule would require a *final order* within *90 days* of the filing of a protest. Again, such a time line would be extremely burdensome and expensive for potential parties, not to mention that it would greatly increase Commission Staff work load. No basis for such an expedited process has been provided.

The proposed rule *requires* that the Commission grant or deny an application under the rule via proposed agency action and *describe* the reasons for the denial. This appears to be an attempt to impose procedural requirements on the Commission that do not currently exist. Apparently, ILECs seek to shift the burden to the Commission to justify denial of an ILEC's request.

This docket is about updating the Commission's rules. Such updating should be done with a review of each rule. While it may be the ILECs' *position* that a particular rule is unnecessary due to the ILECs' view of competition, the ILECs are certainly free to express that

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[38] When the Legislature has determined that certain companies should be regulated in a manner different than other companies, it has included such classifications in statute. *See,* § 364.051, 052, Florida Statutes.

[39] The Legislature certainly has not given the Commission specific authority to delegate to the ILECs the determination of what constitutes a "market" or to define areas "on such other basis" as they may chose at any particular point in time.

[40] As noted at the workshop, this timeframe actually gives Commission Staff only 33 days to prepare a recommendation as they must file it 12 days ahead of the Agenda Conference. Transcript at 133, l. 21-23.

position in the context of how a particular rule should be changed or repealed, to the extent there is disagreement about the status of a rule.[41] It is not necessary for the Commission to adopt a flawed test to overlay on the current rules to determine which rules it no longer needs.

III.

COMPSOUTH'S POSITION ON CURRENT COMMISSION RULES

As noted above, the ILECs have proposed numerous Commission rules for amendment or repeal and much time was spent at the workshop discussing each individual rule. CompSouth's position on the current Commission rules is described below.

A. Staff Attachments B and C[42]

As discussed above, CompSouth objects to the screening rule the ILECs have proposed. A screening rule is unnecessary for amendment or repeal of current Commission rules. As explained above, CompSouth's focus is on the potential effects of the proposed rule changes on wholesale offerings and anticompetitive conduct. As such, CompSouth's comments on specific rule changes are relatively narrow.

1. Potential Impact on SEEM Plan

Several of the rules in Staff Attachments B and C relate to service quality measurements. CompSouth understands from the workshop that other parties, such as the Public Counsel, AARP, and the Attorney General, want various service quality rules to remain in place for retail customers and will no doubt provide comment on this point. This determination is a policy

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[41] Of course, engaging in this discussion at all will only be necessary if a party or Staff disagrees that a rule should be repealed or amended. At the workshop, it appeared that many of the ILEC-suggested changes were not controversial.

[42] For ease of reference, citations are to the Staff handouts, Attachments B and C, used at the May 18th workshop. Because CompSouth does not believe that there is any justification for the arbitrary division between Attachments B and C, CompSouth's concerns are addressed together.

decision that the Commission will need to address.[43] However, this policy matter is unrelated to the adoption or application of the proposed ILEC screening rule.

It is also CompSouth's understanding from comments that the ILEC representatives made at the workshop that none of the service quality rules are applicable to or would impact any provisions of the SEEM (self-effectuating enforcement mechanism) plan.[44] ILEC attorney, Ms. Clark, stated: "The petitioners wish to make clear their intent is not to impact service provided wholesale to other parties represented here today by CompSouth and others. The focus of what we are requesting by our petition is retail service."[45]

However, many of the provisions in the SEEM plan are linked to and dependent on data and analysis from the retail market and a number of the SEEM metrics are based on retail parity. Thus, to the extent any rule changes are made, CompSouth seeks written and unambiguous assurance that such changes will have no impact on SEEM metrics or penalties or on the type of data that AT&T is required to collect and analyze for purposes of the SEEM plan.

The rules for which changes are proposed that may impact the SEEM plan are:

- 25-4.0185 Periodic Reports
- 25-4.021 System Maps and Records[46]
- 25-4.022 Complaint – Trouble Reports, Etc.
- 25-4.023 Report of Interruptions[47]
- 25-4.066 Availability of Service[48]

[43] *See, In re: Joint Petition for the Commission to issue a show cause against Verizon for violation of service availability rule 25-4.070, F.A.C., and impose fines*, Docket No.080278-TL.

[44] *See,* Order No. PSC-01-1819-FOF-TP. *See*, comments of AT&T representative, Mr. Greer; Transcript at 23, l. 9-11; 72, l. 5-7, 17-18; comments of ILEC representative, Dr. Taylor. Transcript at 103, l. 16-17.

[45] Transcript at 102, l. 21-25.

[46] AT&T uses RSAG to check facility availability in its 9-state region, while the 13-state region uses PREMIS. Accurate information about the location of rate and wire centers is critical for CLECs to order and provision correctly.

[47] The Commission should ensure that any change to this rule does not impact metric TGP-4, the trunk group performance report.

- 25-4.069 Maintenance of Plant and Equipment[49]
- 25-4.070 Customer Trouble Reports[50]
- 25-4.071 Adequacy of Service[51]
- 25-4.073 Answering Time[52]
- 25-4.077 Metering and Recording Equipment
- 25-4.085 Service Guarantee Program[53]
- 25-4.107 Information to Customers[54]

The Commission should memorialize in any rulemaking order changing any rules at issue in this docket that none of the rule changes will impact the SEEM plan in any way.

2. Availability of Cost Information

Rule 25-4.046, Incremental Cost Data Submitted by Local Exchange Companies, implements section 364.3381, Florida Statutes. That statute provides:

> (1) The price of a nonbasic telecommunications service provided by a local exchange telecommunications company shall not be below its cost by use of subsidization from rates paid by customers of basic services.
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> (2) A local exchange telecommunications company which offers both basic and nonbasic telecommunications services shall establish prices for such services that ensure that nonbasic telecommunications services are not subsidized by basic

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[48] The Commission should ensure that any change to this rule does not impact metric P-1 (held order interval), P-3 (percent missed installation appointments), P-4 (completion order interval).

[49] The Commission should ensure that any change to this rule does not impact metric M&R-2 (customer trouble rate), M&R 3 (maintenance average duration), M&R-4 (percent repeat customer troubles within 30 calendar days), M&R 5 (out of service greater than 24 hours).

[50] The Commission should ensure that any change to this rule does not impact metric M&R-2 (customer trouble rate), M&R 3 (maintenance average duration), M&R-4 (percent repeat customer troubles within 30 calendar days), M&R 5 (out of service greater than 24 hours).

[51] The Commission should ensure that any change to this rule does not impact metric TGP-1 (trunk group performance).

[52] The Commission should ensure that any change to this rule does not impact metric O-12 (average answering time-ordering centers) and M&R-6 (average answer time- repair centers).

[53] The Commission should ensure that any change to this rule has no impact on AT&T access products.

[54] The Commission should ensure that any change to this rule does not impact metric CM-1(timeliness of change management notices), CM-3 (timeliness of documentation associated with change).

> telecommunications services. The cost standard for determining cross-subsidization is whether the total revenue from a nonbasic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and nonvolume sensitive costs.
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> (3) The commission shall have continuing oversight jurisdiction over cross-subsidization, predatory pricing, or other similar anticompetitive behavior and may investigate, upon complaint or on its own motion, allegations of such practices.

Thus, the purpose of this statute, as implemented by the Commission rule, is to ensure no cross-subsidization, predatory pricing, or other anticompetitive behavior by incumbents. Rule 24-4.406 says that incremental cost yields the appropriate price floor for pricing of individual services and therefore requires the submittal of incremental cost data.

The ILECs have proposed to delete this rule in its entirety.[55] However, because this rule directly implements a statute, the Commission must ensure that it has access to the necessary information to enable it to carry out its statutory responsibility.

CompSouth believes the statutory mandate can be implemented, and does not object to the deletion of the rule, *so long as* the ILEC *must* provide the cost information the rule currently requires in the event that there is a carrier complaint or a Commission investigation alleging cross-subsidization, predatory pricing, or other anticompetitive behavior without precondition. That is, the type of information required currently should not be changed and must be made available if there is a complaint or an investigation without any precondition on request.

Neither the Commission nor CompSouth should be put in the position of having to argue with the ILEC, after a complaint has been filed or an investigation initiated, that incremental cost information has not been retained, that it is not relevant, or that the complainant or Staff is not

[55] This rule was included in ILEC Attachment C – rules to which it is unnecessary in the ILEC view to apply any preexisting test to consider the rule for repeal. One might think that waiver of this rule might involve a discussion of competition.

entitled to it. Therefore, deletion of rule 25-4.046 would require amendment of the current complaint rules to ensure that incremental cost information is made available. CompSouth has proposed such language in Attachments 1 and 2 to these comments.[56]

Rule 25-9.005 requires certain information to accompany ILEC filings. The information that is required is "incremental cost data ...sufficient to demonstrate that the proposed rates of the service are not below incremental cost."[57] As mentioned above, the Commission and parties must have access to incremental cost information in the event of a complaint or investigation. Thus, CompSouth does not object to the deletion of this rule *so long as* the ILEC *must* provide cost information currently required by the rule if there is a complaint or an investigation alleging cross-subsidization, predatory pricing or other anticompetitive behavior.[58]

C. Miscellaneous

Portions of rule 25-4.110, Customer Billing for Local Exchange Companies,[59] are also applicable to CLECs. To the extent the Commission amends or repeals this rule as to the ILECs, it should do so for the CLECs as well.

In addition, the Commission should consider conforming rule 25-4.083, Preferred Carrier Freeze,[60] to the federal PIC freeze rule.[61] It appears that both rules intend to achieve the same result, so uniformity would be desirable.

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[56] Attachment 1 proposes an amendment to rule 25-22.032, Customer Complaints. Attachment 2 proposes an amendment to rule 25-22.0365, Expedited Dispute Resolution Process for Telecommunications Companies. Changes to both these rules would be necessary to ensure that appropriate cost information is available in the event of a complaint or investigation.

[57] Rule 25-9.005(3)(a).

[58] See Attachments 1 and 2 to these comments for revisions necessary to the Commission's complaint rules.

[59] Subsections (11), (12), (14)-(18), and (20) are made applicable to CLECs in rule 25-24.845. The Commission should also ensure that changes to this rule do not impact metrics B-1 BIA, -2 BIT, B-5 BUDT or B-10 BEC (which cover invoice accuracy and timeliness).

[60] This rule is made applicable to CLECs in rule 25-24.845. To the extent any changes are made to this rule or if it is eliminated, the Commission should also ensure that its action does not impact metric P-11 (service order accuracy).

[61] 47 C.F.R. § 64.1190.

Last, rule 25-4.117, 800 Service, should be retained. Numbers utilizing 800 are so universally recognized as toll free that eliminating the rule could result in unnecessary confusion.

IV.

CONCLUSION

The Commission should decline to adopt the proposed screening rule contained in ILEC Attachment A. If the Commission wants to develop segmented market tests, it must expand this docket to allow for the development of such tests and for consideration of the numerous issues that impact retail residential and business competition and wholesale competition in the state. However, CompSouth does not recommend this approach.

If the Commission is of the view that there are rules in Chapter 25-4 (and elsewhere) that require revision or repeal, it should turn directly to that task. The Commission should consider each rule separately on its own merits and determine whether revision or repeal is necessary.

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25-22.032 Customer Complaints.

No change in Sections (1) – (11).

(12) Complaint or Investigation Involving Incremental Cost Data.

(a) In any investigation or any complaint proceeding in which it is alleged that a nonbasic telecommunications service provided by a local exchange telecommunictionas company is being provided below cost by the use of subsidization from rates for basic services, the local exchange telecommunications company which is the subject of the complaint or investigation, shall provide, upon request, the following information:

1. All incremental cost information suppotring the pricing of the service(s) at issue, including, but not limited to:

a. Incremental cost study, including a description of all cost models used and a summary of the cost study results;

b. All assumptions underlying the cost study and a demonstration of the reasonableness of such assumptions;

c. A list of all factors and their values used in the study including, but not limited to, utilzaiton factors, annual charge factors, expense factors and supporting structures factors, including all supporting work papers;

d. A discussion which demonstrates that the cost study methodology employed comports with accepted economic theory regarding incremental cost;

(b) If no cost study has been performed for the service(s) at issue, the local telecommunications exchange company shall provide all information upon which it relied in arriving at the cost for the service(s) at issue;

(c) The information delineated in (a) – (b) above shall be provided to the Commission and complainant(s) within ten (10) days of the initiation of the investigation or complaint, subject only to institution of appropriate protection for any confidential material.

Specific Authority 350.127(2), 364.0252, 364.19, 366.05, 367.121 FS. Law Implemented 120.54, 120.569, 120.57, 120.573, 364.01, 364.0252, 364.03(1), 364.15, 364.183, 364.185, 364.19, 364.337(5), 364.3381, 366.03, 366.04, 366.05, 367.011, 367.111, 367.121 FS. History–New 1-3-89, Amended 10-28-93, 6-22-00, 1-29-04.

25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.

No change in sections (1) - (15).

(16) Complaint or Investigation Involving Incremental Cost Data.

(a) In any investigationor any complaint proceeding which otherwise qualifies for processing under this rule and in which it is alleged that a nonbasic telecommunications service provided by a local exchange telecommunictionas company is being provided below cost by the use of subsidization from rates for basic services, the local exchange telecommunications company which is the subject of the complaint or investigation, shall provide, upon request, the following information:

1. All incremental cost information suppotring the pricing of the service(s) at issue, including, but not limited to:

a. Incremental cost study, including a description of all cost models used and a summary of the cost study results;

b. All assumptions underlying the cost study and a demonstration of the reasonableness of such assumptions;

c. A list of all factors and their values used in the study including, but not limited to, utilzaiton factors, annual charge factors, expense factors and supporting structures factors, including all supporting work papers;

d. A discussion which demonstrates that the cost study methodology employed comports with accepted economic theory regarding incremental cost;

(b) If no cost study has been performed for the service(s) at issue, the local telecommunications exchange company shall provide all information upon which it relied in arriving at the cost for the service(s) at issue;

(c) The information delineated in (a) – (b) above shall be provided to the Commission and complainant(s) within ten (10) days of the initiation of the investigation or complaint, subject only to institution of appropriate protection for any confidential material.

Specific Authority 350.127(2), 364.058(3) FS. Law Implemented 364.058, 364.3381, FS. History–New 8-19-04.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Workshop Comments of the Competitive Carriers of the South, Inc. was served by electronic mail and by U.S. Mail this 20th day of June 2008 to the following:

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