BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of rulemaking to amend and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to telecommunications.	DOCKET NO. 080641-TP FILED: 02/13/09

COMMENTS OF JOINT PETITIONERS

I. INTRODUCTION

1. The Joint Petitioners[1] request additional changes to four of the rules the Florida Public Service Commission ("Commission") has proposed to amend in the Notice of Proposed Rulemaking published in the Florida Administrative Weekly on January 23, 2009.[2] The Joint Petitioners respectfully submit that the three service quality rules – Rules 25-4.066, 25-4.070 and 25-4.073, F.A.C. – should be revised in two ways. First, they should not apply to nonbasic services because there can be no question that nonbasic customers have competitive options and may choose providers that offer the level of service that meets their needs. Second, these rules should be relaxed to allow the market more latitude to determine optimal service levels. The Joint Petitioners also request that Rule 25-4.110, F.A.C., be revised so it only requires companies to meet the Federal Communications Commission's ("FCC") Truth-in-Billing Requirements.

2. The Joint Petitioners initially requested that Rules 25-4.066, 25-4.070, 25-4.073 and 25-4.110, F.A.C., cease to apply in any market determined by the Commission to be competitive. In a compromise reached with competitive local exchange carriers ("CLECs"), the Joint Petitioners agreed to withdraw their request for a market test and proposed that these rules

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[1] The Joint Petitioners are Verizon Florida LLC ("Verizon"), BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T"), Embarq Florida, Inc. ("Embarq"), Quincy Telephone Company d/b/a TDS Telecom ("TDS") and Windstream Florida, Inc. ("Windstream"). These companies were the petitioners in Docket No. 080159-TP, in which amendment or repeal of some of the rules at issue in this docket was first proposed.

[2] The Joint Petitioners do not request a hearing, but request the opportunity to participate in any hearing that may be held on this matter.

simply be eliminated based on the evidence of competition throughout the state. The Joint Petitioners have since proposed an additional compromise – to keep the rules but modify them. The Joint Petitioners continue to support that compromise.

3. In their comments below, the Joint Petitioners explain why sufficient competition exists to discipline service quality, why the service quality rules should apply only to basic service, and what specific changes the Joint Petitioners are requesting.

II. STRONG COMPETITION IN FLORIDA DISCIPLINES SERVICE QUALITY

4. Local telephone carriers, wireless carriers, cable companies and others compete to provide voice services throughout Florida. The Commission's 2008 Competition Report and the March 2008 NERA report on Intermodal Competition in Florida Telecommunications provide conclusive evidence that competition has taken root and is thriving in the state. As the Commission stated when it released the 2008 Competition Report, the data it compiled "confirms that competition remains strong and is even increasing, although the forms of telecommunications contributing to competition are changing. Wireless, VoIP (Voice-over-Internet-Protocol), and broadband services represent a significant share of today's communications market in the state."[3]

5. Wireless coverage in Florida is virtually ubiquitous, with about 99% of Florida households being able to choose from at least three wireless carriers.[4] Florida's wireless subscribership reached about 15.3 million in June 2007, far exceeding the 9.8 million local exchange access lines in the state.[5] By the time of the Commission's 2008 Competition Report, it was estimated that 15.8% of U.S. households had "cut the cord" and were subscribing to

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[3] August 1, 2008 Commission press release.
[4] *Intermodal Competition in Florida Telecommunications*, NERA, 37 (March 2008) (attached to the Joint Petition as Attachment E).
[5] 2008 Competition Report, p. 41.

wireless service only.[6] At the January 6, 2009 Agenda Conference, Staff stated that the trend was continuing and estimated the number of wireless-only households at 15-20% or more. (T. 41).

6. Cable providers offer another option for voice service to most Florida households. More than a year ago, cable telephone service was available to 81% of Florida households and cable providers had won nearly 750,000 Florida residential subscribers. Cable broadband was available to 94% of Florida households, which means that VoIP service also was widely available. Indeed, the Commission estimated that by the end of 2007 about one million Florida customers subscribed to VoIP service.

7. Florida's broadband access line count (from all providers) reached approximately 6.3 million as of June 2007, up from 4.4 million the previous year. Every zip code area in the state has at least three broadband providers with lines in service and 99% of the zip code areas have four or more providers. Customers with broadband have access to VoIP service, giving them another voice service option.

8. Competition has continued to intensify since the Joint Petition was filed almost a year ago, as evidenced by the significant line losses experienced by each of the Joint Petitioners. For the 28 months from June 2006 through October 2008, Florida companies have experienced significant residential access line losses while the number of households has continued to grow. Verizon has lost more than 25% of its residential access lines; Embarq lost approximately 24% of its lines, AT&T line losses exceeded 20%; Windstream lost approximately 7% of its lines; and TDS has lost nearly 13% of its lines. This undeniable trend of residential access line losses is illustrated in the following chart:

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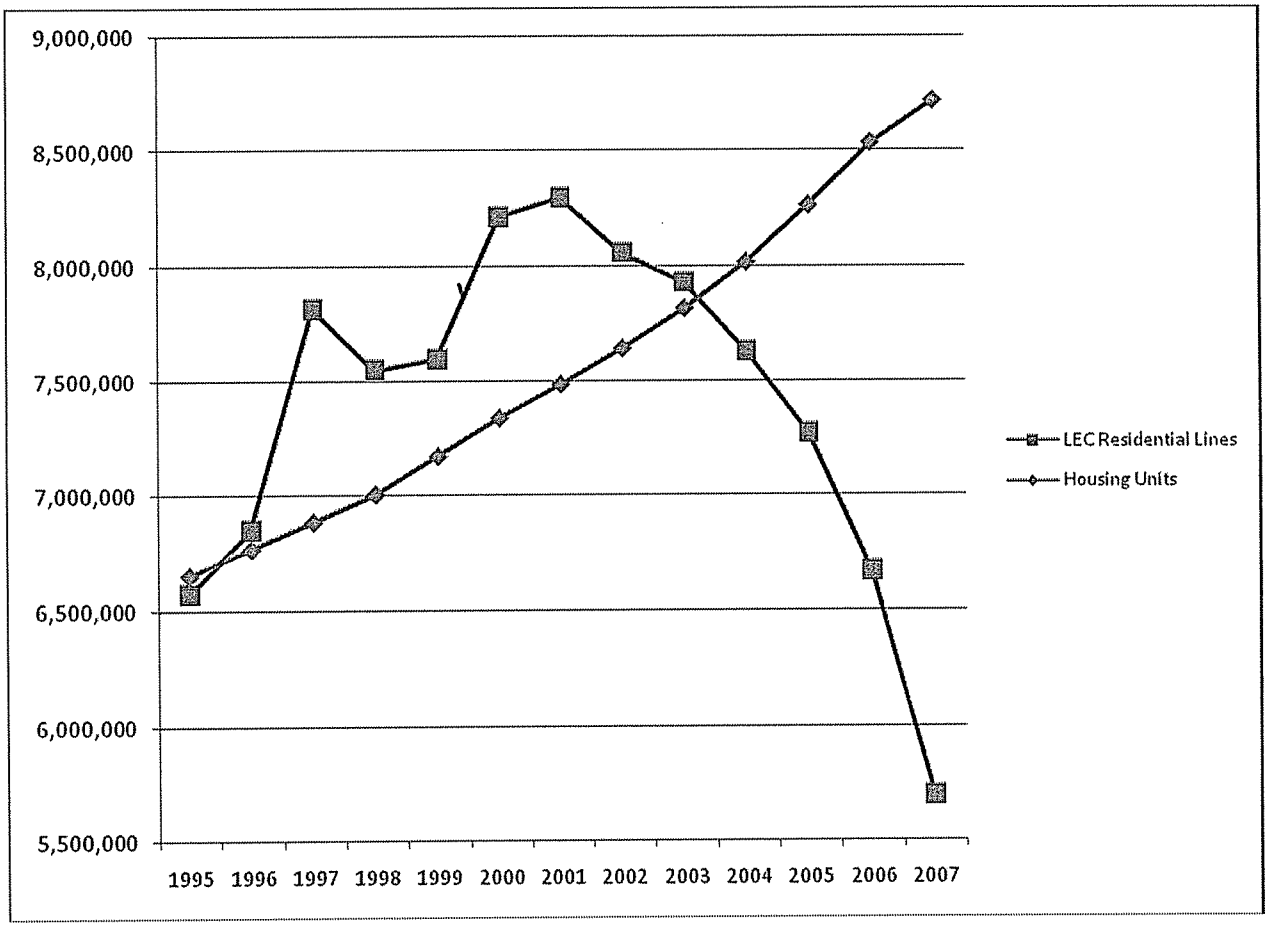
[6] 2008 Competition Report, p. 39.



9. Competition extends to rural areas in Florida, as demonstrated by the wireless coverage that blankets the state, cable telephony that provides another option for most Florida consumers, and the widespread availability of broadband and thus of VoIP service. Moreover, Windstream and TDS, which serve rural areas, submitted evidence that they face substantial competition there. TDS, which services Quincy, Florida, competes with wireless providers, a cable provider and the City of Quincy. Windstream faces competition from Cox Digital Telephone, Comcast Cable, other cable providers and multiple wireless providers.

10. The evidence thus demonstrates that strong competition exists throughout Florida. Even if the Commission finds that such competition is not completely ubiquitous, it must conclude that the market can and will discipline market behavior. As pointed out by Dr. William

Taylor,[7] the relevant inquiry is whether a firm has market power so that any attempt to raise prices or decrease service quality would be successful. Such an attempt cannot be successful if enough customers are able to switch to alternatives that would render those efforts unprofitable. Thus, even if the Commission were to conclude there are pockets where competition is not as vigorous as in the rest of the state, it should relax regulation based on the overall level of competition in the state.

11. As explained by Dr. Taylor and Dr. David Sappington,[8] the evidence of competition in Florida demonstrates that no firm has market power to raise prices or degrade service without suffering economic consequences through customer migration to competitors. Dr. Sappington explained why competition can be relied on to provide customers with the service they desire and value:

> [C]ompetition compels industry suppliers to discover those dimensions of service quality that are most highly valued by consumers, and to continually deliver the optimal levels of this service quality to consumers as their preferences and industry conditions change over time. Competition also fosters on-going innovation and infrastructure investment as industry suppliers strive to better serve customers and as their needs and industry conditions change.
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> In the old days, the pre-competition days, regulators had no choice but to intervene in the marketplace on behalf of consumers. Under monopoly supply of an essential service, the incentives of the industry supplier are not typically closely aligned with the interests of industry consumers. When consumers have no alternative sources of supply for essential services, an unregulated monopolist often will elevate prices and may curtail service quality.

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[7] Dr. Taylor is the Senior Vice President of NERA Economic Consulting, Inc. and head of its telecommunications practice. He has a Ph.D. in economics from the University of California at Berkeley and he has taught and researched extensively in the areas of microeconomics and telecommunications economics. He has testified in federal and state courts as an economic and statistical expert and has participated in telecommunications regulatory proceedings before state, federal and international regulatory commissions.

[8] Dr. Sappington is an Eminent Scholar in the Warrington College of Business at the University of Florida, the Director of the University's Public Policy Research Center, the President of the International Industrial Organization Society and the former Chief Economist of the FCC.

> In contrast, competition drives profit maximizing firms to pursue the very best interests of consumers. Firms that fail to discover and faithfully pursue these interests do not thrive in a competitive market, because consumers will switch their allegiance to alternative suppliers who promise more innovative higher quality services at lower prices. And, thus, intense competition plays the fundamental role of aligning the profit-maximizing incentives of industry suppliers with the very best interests of consumers they are serving.

(T. 10-11). Increased reliance on competition rather than service quality regulation thus will benefit consumers by driving lower prices, innovative services and optimal service levels that meet consumers' needs.

12. Not only are the service quality rules unnecessary in a competitive environment, they distort competition and thus harm consumers. As Dr. Taylor noted, maintaining regulatory rules imposes unnecessary costs on incumbent local exchange companies ("ILECs") and their customers. In addition, asymmetric regulation imposes costs on society as a whole in the form of market, technology and investment distortions that unavoidably result from economic regulation. In essence, resources that could be used for investments in technology, efficiency or productivity (all of which would benefit customers) are diverted and used instead for regulatory compliance.

13. Likewise, Dr. Sappington stated:

> [I]n the presence of intense industry competition, inherently imperfect regulation is not needed to identify and enforce appropriate levels of service quality. Market competition will perform this role, and will continue to do so on an ongoing basis as consumer preferences and industry conditions change.
>
> And not only is service quality regulation unnecessary when competition aligns the interests of consumers, but such regulation can be harmful. Industry costs and thus industry prices rise unnecessarily when suppliers are required to provide unduly high levels of service quality on dimensions that are of limited concern to consumers. Furthermore, when some industry suppliers are required to deliver more than the optimal level of service quality and other suppliers do not face the corresponding obligation, the unregulated suppliers can gain an unfair competitive advantage over the regulated suppliers. This advantage distorts the competitive process and can limit industry innovation and infrastructure investment.

(T. 11-12). In short, undue service quality regulation will harm consumers, while increased reliance on the competitive market will deliver increased consumer benefits.

III. SERVICE QUALITY RULES SHOULD NOT APPLY TO NONBASIC SERVICES

14. To the extent the Commission believes that the level of service quality should continue to be monitored,[9] service quality rules should apply only to basic telecommunications service for several reasons: (i) concerns about the need for service quality rules have focused on basic service; (ii) under Florida law, service quality rules may be limited to basic service; and (iii) competition will ensure that nonbasic customers continue to receive high service quality.[10]

A. Concerns Raised about the Need for Service Quality Rules Have Focused on Basic Residential Local Service Customers.

15. The Office of Public Counsel ("OPC"), AARP and the Attorney General's Office expressed concern that service quality for customers with basic local exchange service should be adequately safeguarded. To address that concern, the Joint Petitioners proposed a compromise in which the service quality rules would apply to basic customers only. This compromise provides additional assurance that low-income, elderly and other basic residential local telecommunications service customers, some of whom for various reasons may not take advantage of the existing competitive offerings, would have a service quality safety net when they receive service from the ILECs. As discussed below, that safety net should be set to give ILECs enough flexibility to respond to competition and provide optimal service levels to customers.

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[9] By offering to reach a compromise concerning the service quality rules, the Joint Petitioners do not waive their right to challenge the Commission's authority to enforce those rules against price-regulated companies.

[10] The Joint Petitioners believe that the level of competition in Florida is sufficient to ensure that all customers will continue to receive high quality service, without the need for stringent regulatory oversight. However, Joint Petitioners do not object to a compromise that provides a safety net for basic service customers.

16. The Joint Petitioners presented their proposed compromise at the January 6, 2009, Agenda Conference. (T. 10, 15-17). The Joint Petitioners clarified that the service quality rules would apply to the ILECs for customers with basic local residential telecommunications service (with or without *a la carte* features), but would not apply for customers with services provided as a package or bundle.[11] (T. 15, 80). In Dr. Sappington's expert opinion as an economist, "Focusing the proposed rules on residential basic local service will provide a strong safety net while harnessing more fully the many benefits that competitive discipline can provide relative to unavoidably imperfect regulatory mandates. And by so harnessing the superior power of competitive discipline, the Commission can best protect the long-run interests of consumers in Florida while encouraging innovation and investment in telecommunications markets and avoiding unnecessary regulatory restraints." (T. 14).

B. Under Florida Law, Service Quality Rules May Be Limited to Basic Service.

17. At the Agenda Conference, it was argued that the service quality rules should not apply exclusively to basic service, in part because nonbasic services, including bundled services, include basic service as a component part. (T. 95, 105, 107-108). Under Florida law, however, a service cannot be both basic and nonbasic service, but must be one or the other. Florida statutes provide that "[b]asic local telecommunications service" means:

> [V]oice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and alphabetical listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended

[11] The number of customers to which the rules would still apply is significant. AT&T and Embarq indicated that approximately 40% of their customer base is comprised of basic residential local telecommunications service customers. (T. 127, 153, 165). The number would be similar for Verizon. (T. 179).

calling service in existence or ordered by the commission on or before July 1, 1995.

Section 364.02(1), Fla. Stat. On the other hand, "Nonbasic service" is defined as "any telecommunications service provided by a local exchange telecommunications company *other than a basic local telecommunications service*, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163." Section 364.02(10), Fla. Stat. (emphasis added). In other words, a nonbasic service is any retail service that is distinct from basic service. Thus, by definition, when a telecommunications service is offered as a package – that is, as a group of services offered at a single price, which necessarily includes nonbasic service elements – that service is a single service, classified as a nonbasic service under the statutes.

18. Staff's assertion at the Agenda Conference that once a service is basic it is always basic, regardless of whether it is bundled with nonbasic components (T. 95), conflicts with the statutory definitions in Chapter 364. Likewise, Staff's comment that "nowhere is there anything in the statute that states that if you have a basic service and you combine it with the nonbasic services . . . that your basic is no longer basic" is not accurate. (T. 95). The definition of nonbasic, as noted above, clearly states that anything that is not by statutory definition "basic" must be nonbasic. *See* Section 364.02(10), Fla. Stat.

19. This distinction between basic and nonbasic also is confirmed by the price regulation statute, which sets forth very different rate increases depending upon whether a service is basic or nonbasic. A local exchange telecommunications company electing price regulation may adjust its basic service rates upon 30 days' notice once in a 12-month period "in an amount not to exceed the change in inflation less 1 percent." Section 364.051(3), Fla. Stat. However, that company may increase nonbasic service rates on a day's notice in an amount not

to exceed 6 percent within a 12-month period (unless there is another local telecommunications service provider, in which case the increase can be up to 20 percent within a 12-month period). Section 364.051(5)(a), Fla. Stat. Under this statutory distinction, services must be classified either as basic or nonbasic, not both.

20. At the Agenda Conference, Staff asserted that Section 364.051, Fla. Stat., relates to pricing only and is therefore irrelevant in this analysis. (T. 95, 104-105). This argument should be rejected because Chapter 364 gives nonbasic service only one definition and it must be applied consistently.

21. The Commission has recognized that bundled service packages are nonbasic services. For example, in Docket Nos. 030867-TL, 030868-TL, 030869-TL and 030961-TL, the Commission acknowledged the difference between basic and bundled services and treated them differently. In the hearing on the telecommunications companies' petitions, Commission Chairman Lila Jaber specifically asked whether BellSouth's and Verizon's rate increases for basic service would include increases for bundles with basic and nonbasic components. Docket Nos. 030867-TL, 030868-TL, 030869-TL and 030961-TL, Transcript of December 16, 2003 Hearing, Volume 16, p. 1981-83. Based on interrogatory answers from the companies, Staff answered no. *Id.* at 1982-83. This distinction between basic and bundled was not questioned by the Chairman, by any of the Commissioners, or by Commission Staff. Ultimately, the Commission authorized rate increases to basic rates only where purchased separately and exempted bundled services. *See* Docket Nos. 030867-TL, 030868-TL, 030869-TL and 030961-TL, Order No. PSC-03-1469-FOF-TL (Dec. 24, 2003).[12] In accordance with this decision and in

[12] In his Motion for Reconsideration, the Attorney General did not take issue with the distinction between basic and bundled service; instead, he expressed concern that an increase for basic service would impact seniors and lower income customers, who could not afford to purchase bundled service, and suggested that protecting those individuals was an appropriate focus for the

conformity with the law, Verizon, Embarq and BellSouth Telecommunications, Inc. have filed tariffs over multiple years consistent with this distinction. Over the next several years, the Commission issued orders approving and acknowledging the tariffs and, ultimately, closing the dockets. *See e.g.*, Docket No. 050878-TL, Order No. PSC-05-1053-FOF-TL (Oct. 31, 2005) (approving tariffs); Docket No. 060700-TL, Order PSC-07-0045-FOF-TL (Jan. 16, 2007) (acknowledging tariffs); Docket No. 060700-TL, Order PSC-07-0768-PCO-TL (Sept. 20, 2007) (closing docket). These actions illustrate the Commission's consistent interpretation that bundles are nonbasic rather than basic service.

22. Staff also has suggested that Section 364.08, Fla. Stat., requires the Commission to apply quality service rules to bundled services. (T. 17, 96). But as noted by the Staff, the statute prohibits a "*telecommunications company*" from extending to "any person any advantage of contract or agreement or the benefit of any rule or regulation or any privilege or facility not regularly and uniformly extended to all persons under like circumstances for *like or substantially similar service*." Section 364.08(1), Fla. Stat. (emphasis added). The statute addresses telecommunications companies, not the Commission, and requires the uniform application of charges for like or substantially similar service. Further, Florida statutes already make a clear distinction between basic and nonbasic service and provide for different treatment for such services throughout Chapter 364. By statute, they are distinct services so they cannot also be "like or substantially similar service," as contemplated by Section 364.08(1), Fla. Stat.

23. Distinguishing basic from nonbasic service as Joint Petitioners have proposed is consistent with the public policy expressed in Florida statutes to encourage competition in the

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Commission. Docket Nos. 030867-TL, 030868-TL, 030869-TL and 030961-TL, Motion of Charles J. Crist, Jr., Attorney General, State of Florida, for Reconsideration, p. 2-3 (Jan. 8, 2004). Likewise, the Joint Petitioners believe that this is consistent with their position that the applicability of service quality rules should be limited to basic residential local telecommunications service.

Florida telecommunications market. Section 364.01(4), Fla. Stat., specifies that the Commission should encourage competition in telecommunications through "flexible regulatory treatment," eliminate rules which will delay the transition to competition, ensure that telecommunications carriers are treated fairly by "eliminating unnecessary regulatory restraint," and, finally, recognizes the emergence of a competitive telecommunications market in Florida by providing "flexible regulatory treatment" of telecommunications providers. The compromise proposed by the Joint Petitioners allows the Commission to encourage competition by allowing the ILECs more flexibility in responding to the changing telecommunications market and to the increasing competition from other non-regulated providers.

C. *Florida's Competitive Markets Will Ensure that Nonbasic Customers Continue to Receive High Service Quality.*

24. Competition will ensure that nonbasic customers, including customers with bundled services, enjoy good customer service. Although ILECs have a strong incentive to satisfy all their customers, there can be no question that ILECs are motivated to please nonbasic customers because they generate higher revenues and are more apt to subscribe to additional services. ILECs fail to satisfy these customers at their peril because they can and will switch to another provider if they receive unsatisfactory service. The Commission therefore can be confident ILECs will be vigilant in meeting the customer service needs of these customers.

25. Finally, arguments that quality service standards for the ILECs should be maintained to drive the performance of unregulated providers (T. 49-50) must be rejected for at least two reasons. First, the Commission should not seek to regulate indirectly services and companies outside its jurisdiction. Second, consumers are better served if unregulated companies focus on providing the level of service customers actually need and value, not what

the Commission believes they should have. As discussed below, the Commission should follow the same approach with ILEC service quality regulation.

IV. REQUESTED RULE AMENDMENTS

26. In addition to the general comments given above, the Joint Petitioners offer the following comments regarding four (4) specific rules contained in the Commission's Notice of Proposed Rulemaking. **Attachment A** to these comments sets forth specific alternative rule language for each of these rules.

A. Rule 25-4.066, Availability of Service

27. The Joint Petitioners question the Commission's authority to set the standards in this rule, in light of the fact that the ILECs' Carrier-of-Last-Resort ("COLR") obligations have sunsetted. *See* Section 364.025(2), Fla. Stat. (indicating that the ILECs' COLR obligation ended January 1, 2009). The Commission has already recognized the impact on its authority of the sunsetting of COLR obligations by its proposal to repeal Rule 25-4.067, F.A.C. Likewise, since the law does not now require an ILEC to provide service, the Commission's authority to prescribe standards for such service is, at the very least, suspect. Furthermore, imposing such requirements is counterproductive to encouraging ILECs to continue to provide service to new customers.

28. If the Commission nonetheless decides to maintain Rule 25-4.066, F.A.C., at this time, at a minimum, the Joint Petitioners propose that this rule should be modified to apply only to basic residential local telecommunications service and the installation interval should be increased from three days to five. The current rule applies only to basic service and the Commission's proposed change to expand the rule to apply beyond basic service, given Florida's competitive environment, is a move in the wrong direction. Further, Staff recommended that the installation interval be increased to five days. (T. 233). This change provides flexibility to the

ILECs to more efficiently schedule service and deploy technicians, which will save money and allow the ILECs to compete more effectively with alternative providers who are not subject to this rule.

B. Rule 25-4.070, Customer Trouble Reports

29. The Joint Petitioners request three changes to the Commission's proposed Rule 25-4.070, F.A.C.: (i) that the rule apply to basic residential customer telephone service only; (ii) that the objective for trouble clearance (both out-of-service ("OOS") and service-affecting trouble, or not-out-of-service ("NOOS"), conditions) be changed to 80% within 48 hours; and (iii) that the rule provide for service objectives rather than service standards.

30. The Joint Petitioners request that Rule 25-4.070 apply to basic service only for the reasons discussed above. For companies that do not have systems enabling them to report results on an automated basis according to service type, performance should be measured and reported based on results for all residential telecommunications customers.

31. The Commission has proposed that the OOS and NOOS service objectives be reduced from 95% to 90%, but this change does not go nearly far enough. The Commission's goal should be to allow the market to seek out optimal service levels, not to make incremental changes that maintain the existing regulatory paradigm. The Joint Petitioners respectfully request that the objectives be reduced to 80%, which would continue to provide a safety net to assure that repair timeliness stays within certain limits, but would leave more room for market forces to find service levels that consumers value. The Joint Petitioners further request that the OOS and NOOS service objectives be combined so they may achieve greater efficiencies in their repair operations.

32. The proposed rule would change the service objectives to service standards. The Joint Petitioners respectfully submit that the rule should continue to have a service objective that

companies strive to meet, rather than a standard that imposes a stricter requirement. As competition continues to intensify, and as ILECs continue to lose lines to unregulated providers, the Commission should be moving toward less regulation, not more.

C. Rule 25-4.073, Answering Time

33. Joint Petitioners propose a rule that applies to basic residential customers only and that requires an average speed of answer ("ASA") not to exceed 120 seconds. An ASA of not more than 120 seconds would provide the Commission with assurance that the answer time will not be unreasonable and will be on par with other answer times experienced by customers in other industries.

34. Staff's recommendation on this issue and Commissioner comments show the current proposal of a 90 second answer time is apparently based only on anecdotal information; that it "is acceptable compared to other industries." Docket Nos. 080641-TP and 080159-TP, Staff Recommendation (Dec. 23, 2008), p. 30. The Joint Petitioners believe that a 120 second answer time is likewise acceptable and reasonable. (T. 206). Aggressive answer time requirements increase costs to companies and decrease capital that could otherwise be used to deploy broadband or provide the services that customers value. (T. 172).

35. What matters to customers is not how soon they get to a live operator, but whether and how soon they get their problems resolved. Docket No. 080159-TP, Transcript of September 10, 2008 Rulemaking Workshop, p. 144. Extending the answer time to 120 seconds will give the ILECs added flexibility to employ methods of assistance that resolve customers' problems, not just get them to a live operator 30 seconds sooner.

D. Rule 25-4.110, Customer Billing for Local Exchange Telecommunications Companies

36. Rule 25-4.110, F.A.C., is unnecessary in Florida because the telecommunications market is competitive. None of the provisions of this rule are required of the CLECs or of any of the ILECs' other competitors. In addition, the requirements in Section 364.604, Fla. Stat., and the FCC's requirements in 47 C.F.R. §§64.2400-64.2401 adequately cover this area. The Joint Petitioners propose a rule that references the requirements of the FCC. The FCC's Truth-In-Billing requirements provide customers the tools needed to make informed choices in the market and provide carriers with specific requirements as to information provided to customers on their bills. Anything additional is unnecessary and redundant and serves only to micromanage the ILECs' billing. Further, requiring pre-approval by the Commission of bill changes is costly and may discourage streamlining of customer bills. The Joint Petitioners believe that section (1) of the rule should be modified to refer to the FCC's requirements and that sections (2) through (16) are unnecessary and should be repealed, as indicated in **Attachment A**. In addition, the Joint Petitioners respond below to several of the specific sections of the rule that the Commission proposes to retain.

37. Subsections (3), (4) and (5) – The Commission proposes retaining the itemization requirements as well as items required on the bill. None of these sections apply to CLECs or the ILECs' other competitors. Further, the FCC's requirements and Section 364.604, Fla. Stat., require any charge on the customer's bill be clearly identified as to who provided the service, what the service is and the charges for the service. While the Joint Petitioners recognize that they must provide an annual bill insert advising each residential customer of the price of each service option selected by that customer, and that a copy of the notice provided to customer service representatives concerning the required disclosure must be submitted to the Commision

for prior approval, subsections (3) and (4) are unnecessary as these requirements are adequately covered by Section 364.3382, Fla. Stat. Thus, retaining these requirements in the rule is unnecessary.

38. Subsection (6) – The Commission proposes retaining the requirement to provide service interruption credits. This is unnecessary since this provision is duplicative of the requirement in Rule 25-4.070(1)(b), F.A.C.

39. Subsection (10) – The Commission proposes retaining the 12-month backbilling limitation for the ILECs. Other carriers are not subject to such a requirement and instead are governed by the applicable statute of limitations. The same should be true for the ILECs.

40. Subsection (12) – The Commission proposes to retain portions of the 900/976 rules to adjust the bill containing Pay Per Call charges upon the customer's stated lack of knowledge that such calls have a charge. In addition, the Commission proposes retaining 900/976 notice of blocking provisions to the customer. None of these requirements are applied to the ILECs' competitors and they are unnecessary in today's environment. The FCC's rules and Section 364.604, Fla. Stat., require carriers to clearly identify all charges on the bill and to provide specific notice to customers about how to contest charges on the bill. If the customer disputes the charges, Section 364.604(2), Fla. Stat., prohibits carriers from charging for services not requested by the customer. If a dispute arises, then the appropriate method to resolve it would be a complaint proceeding before the Commission.

V. THE COMMISSION SHOULD ADOPT THE JOINT PETITIONERS' PROPOSED AMENDMENTS

41. **Attachment A** outlines the Joint Petitioners' specific alternative rule language for Rules 25-4.066, 25-4.070, 25-4.073 and 25-4.110, F.A.C. These proposed changes to the published amendments in the Commission's Notice of Proposed Rulemaking would provide a

safety net to basic local residential telecommunications service customers while allowing the ILECs the flexibility needed to compete in Florida's current telecommunications market. As stated by Dr. Sappington:

> [O]ngoing application of regulatory rules to residential basic local service is not the only safety net that consumers would enjoy under the petitioners' proposed rule changes. The Commission always has the power to change service rules should a regulated supplier foolishly provide an inadequate level of service quality. And I say foolishly, because not only would such an action harm the supplier by driving valuable customers into the arms of welcoming alternative suppliers, but the action would invite the Commission to impose stringent, asymmetric service quality standards that could severely handicap the regulated supplier.

(T. 13-14). Therefore, to ensure that customers benefit from increasing competition and from the ability of all providers to better meet their needs, the Commission should adopt the Joint Petitioners' proposed changes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via electronic mail this 13th day of February, 2009, upon the following:

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ATTACHMENT A

Joint Petitioners' Proposed Changes to Commission's Rule Amendments

25-4.066 Availability of Residential Service.

(1) Each telecommunications company shall provide central office equipment and outside plant facilities designed and engineered in accordance with realistic anticipated customer demands for basic residential local telecommunications service within its certificated area in accordance with its filed tariffs.

2) Where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary basic residential local telecommunications service shall be installed within an interval of ~~three~~ five working days after receipt of application when all tariff requirements relating thereto have been complied with, except those instances where a later installation date is requested by the applicant or when broadband or video services are requested in addition to the telecommunications service.

(3) If the applicant for primary basic residential local telecommunications service requests an installation date beyond ~~three~~ five working days, the requested date shall be counted as day ~~three~~ five for measurement purposes.

(4) Failure of the customer to afford the company representative entry to the premises during the appointment period shall exempt the order for measurement purposes.

(5) Each company shall report primary residential installation performance pursuant to Rule 25-4.0185, F.A.C., Periodic Reports.

25-4.070 Customer Trouble Reports for Residential Service.

(1) Each telecommunications company shall make all reasonable efforts to minimize the extent and duration of service interruptions and service affecting conditions (collectively, "trouble conditions") that disrupt or affect basic residential customer telephone service. Trouble reports will be classified as to their severity on a service interruption (synonymous with out-of-service or OOS) or service affecting (synonymous with non-out-of-service or non-OOS) basis. Service interruption reports shall not be downgraded to a service affecting report; however, a service affecting report shall be upgraded to a service interruption if changing trouble conditions so indicate.

(a) Companies shall make every reasonable attempt to restore service on the same day that the interruption is reported to the serving repair center.

(b) In the event a subscriber's service is interrupted other than by a negligent or willful act of the subscriber and it remains out of service in excess of ~~24~~ 48 hours after being reported to the company, an appropriate adjustment or refund shall be made to the subscriber automatically, pursuant to Rule 25-4.110, F.A.C. (Customer Billing). Service interruption time will be computed on a continuous basis, Sundays and holidays included. Also, if the company finds that it is the customer's responsibility to correct the trouble, it must notify or attempt to notify the customer within ~~24~~48 hours after the trouble was reported.

(2) Sundays and Holidays:

(a) Except for emergency service providers, such as the military, medical, police, and fire, companies are not required to provide normal repair service on Sundays. Where any repair action involves a Sunday or holiday, that period shall be excepted when computing service objectives ~~standards~~, but not refunds for service interruptions.

(b) Service interruptions occurring on a holiday not contiguous to Sunday will be treated as in paragraph (2)(a) of this rule. For holidays contiguous to a Sunday or another holiday, sufficient repair forces shall be scheduled so that repairs can be made if requested by a subscriber.

(3) Service Objectives~~Standard: (a) Service Interruption:~~ Trouble reports for trouble conditions for basic residential service shall be corrected 80 percent of the time within 48 hours. For companies that do not have systems enabling them to report results on an automated basis according to service type, performance will be measured and reported based on results for all residential telecommunications customers. ~~Restoration of interrupted service shall be scheduled to ensure at least 90 percent shall be cleared within 24 hours of report.~~

~~(b) Service Affecting: Clearing of service affecting trouble reports shall be scheduled to ensure at least 90 percent of such reports are cleared within 72 hours of the report.~~

(4) If the customer requests that the service be restored on a particular day beyond the service objective ~~standards~~ in subsection (3) above, the trouble report shall be counted as having met the service objective ~~standards~~ if the requested date is met.

(5) Priority shall be given to service interruptions that affect public health and safety that are reported to and verified by the company and such service interruptions shall be corrected as promptly as possible on an emergency basis.

(6) The service objective~~standards~~ of this rule shall not apply to subsequent customer reports or emergency situations, such as unavoidable casualties where at least 10 percent of an exchange is out of service.

(7) Each company shall report pursuant to Rule 25-4.0185, F.A.C., Periodic Reports, the performance of the company with respect to customer trouble reports.

(8) This rule shall apply to basic residential service only.

25-4.073 Answering Time for Residential Service

(1) Each telephone company shall provide equipment designed and engineered on the basis of realistic forecasts of growth, and shall make all reasonable efforts to provide adequate personnel so as to meet the following service standards under normal operating conditions:

(a) Answer time for calls directed to repair services and calls directed to business offices for basic residential service customers will be measured and reported based on the average speed of answer (ASA). Measurement of ASA begins when the call leaves the Integrated Voice Response Unit (IVRU) and ends when a service representative answers the call or the caller abandons the call. Where an IVRU is not used, measurement of ASA begins as soon as the call is received and ends when a service representative answers the call or the caller abandons the call. The ASA shall not exceed 120 seconds. For companies that do not have systems enabling them to report results on an automated basis according to service type, performance will be measured and reported based on results for all residential telecommunications customers. Upon request, the Commission may authorize a company to measure and report results on an alternative basis. ~~At least 90 percent of all calls directed to business and repair offices for residential service shall be answered within 90 seconds after the last digit is dialed when no menu driven system is utilized.~~

(b) For calls initially routed to an automated menu and handled without the intervention of a live business office representative, the answer time for these calls should be counted as one second. ~~When a company utilizes a menu driven, automated, interactive answering system (referred to as the system or as an Integrated Voice Response Unit (IVRU)), at least 95 percent of the calls offered shall be answered within 30 seconds after the last digit is dialed. The initial recorded message presented by the system to the customer shall include the option of transferring to a live attendant within the first 60 seconds of the message.~~

~~(c) For subscribers who select the option of transferring to a live assistant, the call shall be transferred by the system to a live attendant. At least 90 percent of the calls shall be answered by the live attendant prepared to give immediate assistance within 90 seconds of being transferred to the attendant.~~

(~~c~~d) The terms "answered" as used in paragraphs (a) ~~and (c)~~ above~~,~~ shall refer to calls in which the customer elects to speak to a service representative, and shall be construed to mean more than an acknowledgment that the customer is waiting on the line. It shall mean that the service representative is ready to render assistance.

(2) All telecommunications companies are expected to answer their main published telephone number on a 24 hour a day basis. Such answering may be handled by a special operator at the toll center or directory assistance facility when the company offices are closed. Where after hours calls are not handled as described above, at least the first published business office number will be equipped with a telephone answering device which will notify callers after the normal working hours of the hours of operation for that business office. Where recording devices are used, the message shall include the telephone number assigned to handle urgent or emergency calls when the business office is closed.

(3) Each company shall report pursuant to Rule 25-4.0185, F.A.C., Periodic Reports, the performance of the company with respect to answer time.

(4) This rule shall apply to basic residential service only.

25-4.110 Customer Billing for Local Exchange Telecommunications Companies.

(1) Each company shall meet the requirements as prescribed by the Federal Communications Commission in Title 47, Code of Federal Regulations, Part 64, Sections 64.2400 and 64.2401, Truth-in-Billing Requirements for Common Carriers, revised as of October 1, 2007.~~issue bills monthly or may offer customers a choice of billing intervals that includes a monthly billing interval.~~

~~(2) If each recurring charge due and payable is not itemized, each bill shall contain the following statement: "Further written itemization of local billing available upon request." In addition, the billing party will provide a plain language explanation to any customer who contacts the billing party.~~

~~(3) Each LEC shall provide an itemized bill for local service:~~

~~(a) With the first bill rendered after local exchange service to a customer is initiated or changed; and~~

~~(b) To every customer at least once each twelve months.~~

~~(4) The annual itemized bill shall be accompanied by a bill insert or bill message which explains the itemization and advises the customer to verify the items and charges on the itemized bill. This bill insert or bill message shall be submitted to the Commission's Division of Regulatory Compliance for prior approval. An itemized bill shall include, but not be limited to the following information, separately stated:~~

~~(a) Number and types of access lines;~~

~~(b) Charges for access to the system, by type of line;~~

~~(c) Charges for each custom calling feature or package;~~

~~(d) Unlisted number charges;~~

~~(e) Local directory assistance charges;~~

~~(f) Other tariff charges; and~~

~~(g) Other nontariffed, regulated charges contained in the bill.~~

~~(5) All bills rendered by a local exchange company shall clearly state the following items:~~

~~(a) Any discount or penalty. The originating party is responsible for informing the billing party of all such penalties or discounts to appear on the bill, in a form usable by the billing party;~~

~~(b) Past due balance;~~

~~(c) Amounts or iItems for which nonpayment will result in disconnection of the customer's basic local service, including a statement of the consequences of nonpayment;~~

~~(d) Long-distance monthly or minimum charges, if included in the bill;~~

~~(e) Long-distance usage charges, if included in the bill;~~

~~(f) Usage-based local charges, if included in the bill;~~

~~(g) Telecommunications Access System Surcharge, per subsection 25-4.160(3), F.A.C.;~~

~~(h) "911" fee per Section 365.171(13), F. S.; and~~

~~(i) Delinquent date.~~

~~(6) Each company shall make appropriate adjustments or refunds where the subscriber's service is interrupted by other than the subscriber's negligent or willful act, and remains out of order in excess of 48 hours after the subscriber notifies the company of the interruption. The refund to the subscriber shall be the pro rata part of the month's charge for the period of days and that portion of the service and facilities rendered useless or inoperative; except that the refund shall not be applicable for the time that the company stands ready to repair the service and the subscriber does not provide access to the company for such restoration work. The refund may be accomplished by a credit on a subsequent bill for telephone service.~~

~~(7) Bills shall not be considered delinquent prior to the expiration of 15 days from the date of mailing or delivery by the company.~~
~~(8) Each telephone company shall include a bill insert or bill message advising each subscriber of the directory closing date and the subscriber's opportunity to correct any error or make changes as the subscriber deems necessary in advance of the closing date. It shall also state that at no additional charge and upon the request of any residential subscriber, the exchange company shall list an additional first name or initial under the same address, telephone number, and surname of the subscriber. The notice shall be included in the billing cycle closest to 60 days preceding the directory closing date.~~
~~(9) Annually, each telephone company shall include a bill insert or bill message advising each residential subscriber of the option to have the subscriber's name placed on the "No Sales Solicitation" list maintained by the Department of Agriculture and Consumer Services, Division of Consumer Services, and the 800 number to contact to receive more information.~~
~~(10) Where any undercharge in billing of a customer is the result of a company mistake, the company may not backbill in excess of 12 months.~~
~~(11) Each LEC shall apply partial payment of an end user/customer bill first towards satisfying any unpaid regulated charges. The remaining portion of the payment, if any, shall be applied to nonregulated charges.~~
~~(12) The LEC or IXC will adjust the first bill containing Pay Per Call charges upon the end user's/customer's stated lack of knowledge that Pay Per Call service (900 and 976) has a charge. A second adjustment will be made if necessary to reflect calls billed in the following month which were placed prior to the Pay Per Call service inquiry. At the time the charge is removed, the end user/customer shall be notified of the availability of free blocking of Pay Per Call service (900 and 976).~~
~~(13) Companies that bill for local service must provide notification with the customer's first bill or via letter, and annually thereafter that a PC Freeze is available at no charge. Existing customers must be notified annually that a PC Freeze is available at no charge. Notification shall conform to the requirements of Rule 25-4.083.~~
~~(14) If a customer notifies a billing party that they did not order an item appearing on their bill or that they were not provided a service appearing on their bill, the billing party shall promptly provide the customer a credit for the item and remove the item from the customer's bill, with the exception of the following:~~
~~(a) Charges that originate from:~~
~~1. Billing party or its affiliates;~~
~~2. A governmental agency;~~
~~3. A customer's presubscribed intraLATA or interLATA interexchange carrier; and~~
~~(b) Charges associated with the following types of calls:~~
~~1. Collect calls;~~
~~2. Third party calls;~~
~~3. Customer dialed calls for; and~~
~~4. Calls using a 10-10-xxx calling pattern.~~
~~(15)(a) Upon request from any customer, a billing party must restrict charges in its bills to only:~~
~~1. Those charges that originate from the following:~~
~~a. Billing party or its affiliates;~~
~~b. A governmental agency;~~
~~c. A customer's presubscribed intraLATA or interLATA interexchange carrier; and~~
~~2. Those charges associated with the following types of calls:~~

~~a. Collect calls;~~
~~b. Third party calls;~~
~~c. Customer dialed calls; and~~
~~d. Calls using a 10-10-xxx calling pattern.~~
~~(b) Customers must be notified of this right by billing parties annually and at each time a customer notifies a billing party that the customer's bill contained charges for products or services that the customer did not order or that were not provided to the customer.~~
~~(c) Small local exchange telecommunications companies as defined in Section 364.052(1), F. S., are exempted from this subsection.~~
~~(16) In addition to the requirements listed in subsections (1) through (15) above, the local provider shall meet the requirements as prescribed by the Federal Communications Commission in Title 47, Code of Federal Regulations, Part 64, Sections 64.2400 and 64.2401, Truth-in-Billing Requirements for Common Carriers, revised as of October 1, 2007, which are incorporated into this rule by reference.~~