

Diamond Williams

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From: Martha Johnson [marthaj@fcta.com]
Sent: Friday, May 07, 2010 4:33 PM
To: Filings@psc.state.fl.us
Cc: Kathryn Cowdery; Laura King; David Konuch
Subject: Undocketed - FCTA's Post Workshop Comments in Response to Staff's 3-16-10 Notice
Attachments: Undocketed - FCTA post workshop comments 5-7-10.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact David Konuch at the number below. Thank you.

A. The person responsible for this electronic filing is:

David A. Konuch
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B. The docket title is: In Re: Initiation of Rulemaking to Amend Rules in Chapters 25-4 and 25-24, F.A.C., to Address Publication of Service Schedules by Telecommunications.

C. This document is filed on behalf of the Florida Cable Telecommunications Association, Inc.

D. This document has a total of 8 pages.

E. Description of document: FCTA's post-workshop comments.

Thank you,

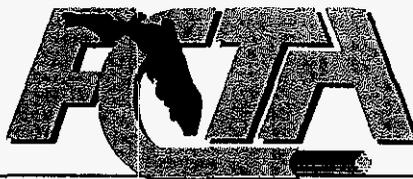
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DOCUMENT NUMBER-DATE

03896 MAY -7 0

FPSC-COMMISSION CLERK

5/10/2010



Florida Cable Telecommunications Association

Steve Wilkerson, President

May 7, 2010

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Undocketed** – Initiation of Rulemaking to Amend Rules in Chapters 25-4 and 25-24,
F.A.C., to Address Publication of Service Schedules by Telecommunications

Dear Ms. Cole:

Enclosed for electronic filing are the post-workshop Comments of the Florida Cable
Telecommunications Association, Inc. in response to the Commission Staff's March 16, 2010
Notice.

If you have any questions whatsoever, please do not hesitate to contact me at (850) 681-1990.

Your assistance in this matter is greatly appreciated.

Sincerely,

David A. Konuch
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Enclosures

DOCUMENT NUMBER CASE

03896 MAY-7 2010

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Rulemaking to Amend
Rules in Chapters 25-4 and 25-24, F.A.C., to
Address Publication of Service Schedules by
Telecommunications

Undocketed

May 7, 2010

**POST-WORKSHOP COMMENTS OF FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION**

Florida Cable Telecommunications Association, Inc. ("FCTA")¹ hereby submits its post-workshop comments in response to the Commission Staff's March 16, 2010 Notice of proposed changes to Commission rules as a result of Incumbent Local Exchange Carrier ("ILEC") deregulation provisions enacted during the 2009 Florida legislative session.

INTRODUCTION AND BACKGROUND

In 2009, the Florida Legislature passed and the governor signed into law SB 2626, which largely deregulated retail telecommunications service provided by Incumbent Local Exchange Carriers ("ILECs"). The Staff convened a workshop on March 30, 2010 to consider its draft rules to implement the deregulatory changes resulting from SB 2626. At the workshop, Staff explained that some of the rule changes would result in a "significant change" in regulation of Competitive Local Exchange Carriers ("CLECs"). Specifically, Staff proposed that CLECs would be subject to additional regulation as they would need to file many of the same rules concerning tariff filing as the ILECs.

When opening the Florida market to local telecommunications competition, the Commission wisely chose to do two things among others: 1) it maintained jurisdiction over ILEC retail service to remove impediments to competition and resolve disputes between

¹ FCTA represents cable telephony providers throughout the state of Florida who provide, by and large, the only facilities-based mass market telephony competition to Florida's ILECs. FCTA's six largest members include Advanced, Atlantic Broadband, Bright House Networks, Comcast, Cox, and Mediacom.

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FPSC-COMMISSION CLERK

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competitors over bottleneck inputs; and 2) it maintained a light regulatory touch over the activities of CLECs. Years later, that strategy has borne fruit, as competitors have begun to make progress by winning customers from the ILECs. It would indeed be ironic were the Commission to use ILEC deregulation as an opportunity to increase regulation of CLECs. The Commission should retain its "light touch" approach and refrain from imposing any new regulatory obligations upon CLECs.

1. Staff Should Not Use ILEC "Deregulation" as a Reason for a "Significant Change" that Would Require Additional CLEC Regulation

At the workshop, Staff proposed to delete the "price list" language in the rules stating that CLECs only need to file price lists, and replace it with language stating CLECs must file "service schedules." Staff Proposed Draft Rules, p. 21, line 21. While seemingly innocuous, Staff stated their intent is that *all* telecommunications companies, including CLECs will now be subject to the same tariff formulation requirements that previously had only applied to ILECs. Staff asserted that the governing statute, Ch. 364.04, F.S., makes no distinction between ILECs and CLECs, and thus, this change to the law has a basis in the statute.² The Staff stated that, in their view, this was a "significant change" to the current regime.³

Although the Staff terms this a significant change – and it would be for certificated CLECs – there are significant limits to the effect of this change on providers, for two reasons. First, the Commission lacks authority to regulate VoIP service by statute. Ch.

² See e.g. pp. 38:19-24 ("I think the biggest [proposed] change to that rule is requiring CLECs to have the same requirements as ILECs. Years ago [the Commission] only required CLECs to file a price list when they offered basic local as defined. And after talking with our legal staff, they believe that 364.04 doesn't exempt anyone from having requirements.")

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364.02(13), F.S. (“The term ‘service’ does not include broadband service or voice-over-Internet protocol service for purposes of regulation by the commission.”) Therefore, these provisions would not apply to cable’s VoIP telephony service. And second, the statute limits regulation to “basic” service. *See e.g.* Ch. 364.337(5), F.S. (providing that “the Commission shall have continuing regulatory oversight over the provision of *basic* local exchange telecommunications service,” emphasis supplied). Cable’s business model has been to offer unlimited VoIP telephony service, including numerous vertical features, for a flat fee. Any combination of basic service and non-basic or unregulated service is considered unregulated “non-basic service” for purposes of Commission regulation. *See* Ch. 364.02(10). At present, after polling FCTA members, the amount of customers who subscribe to “basic only” is either zero or a de minimis amount. Therefore, even if the Commission had jurisdiction to regulate VoIP telephony providers – which it does not, pursuant to Ch. 364.02(13), F.S. – these provisions would only apply to the extent a certificated CLEC provided basic only service – which cable telephony providers by and large do not do.

Nevertheless, even though such a regulation would touch few if any cable telephony customers, FCTA does not see any purpose for extending this regulation to CLECs at this time. By definition, the CLEC will be competing with an ILEC. Where, as here, competition exists in the form of the ILEC, which started out with all of the customers, there is no basis exists for regulating the service quality or other aspects of the competitive provider’s service.⁴

³ Tr. p. 39:11-19 (Ms. King: “I know in that original rulemaking there were comments about, you know, this is new, new and we want to be less burdensome on the CLECs. . . . if somebody wants to make a comment on [the change from that regime], we’d appreciate getting those comments because that is a significant change.”)

⁴ In contrast, ample basis exists for continuing to regulate an ILEC’s provision of *wholesale* service, which is a bottleneck input for CLECs and for other measures that serve to ensure markets remain open and that a level playing

Not all competitive providers who have sought to serve Florida's telephony market have been successful. The ultimate arbiter of whether a competitive provider is succeeding or failing is the marketplace. If cable's telephony service does not meet the customer's service quality or price standards, the customer can switch to the ILEC. Thus far, the marketplace has validated cable telephony's price and service quality. Cable has gained customers and currently services over 1.4 million residential customers.

It would be ironic were the Staff and Commission to use a re-write designed to implement the ILEC deregulation statute as an opportunity to add regulation to CLECs. Staff did not identify any need at the workshop that would serve as a basis for imposing additional regulations on CLECs. Rather, the Staff appeared to want to extend regulations to CLECs because the legislative language supported such an extension, even though it had never been done before.⁵ Yet, just because someone arguably *can* do something does not mean that they should. The current rules have enabled competitors to make inroads into the Florida telephony market. It would be difficult to determine how much of those gains resulted from the Commission's efforts to ensure a level playing field, its light touch regulation, and each competitor's own dogged efforts to win customers. Rather than experiment with changes to these rules, and with no demonstrated need for changes, the Staff should leave the current rules concerning CLECs as they are. The Staff should not recommend that the Commission extend new regulation to CLECs.

field exists. Thus, for example, the legislature did not remove or lessen any regulations on the ILEC wholesale services.

⁵ Even cable's competitors recognize that using the ILEC deregulation and SB 2626 as an opportunity to add regulations to CLECs would be unusual. *See* Tr. p. 5:23-25. (statement by Verizon's counsel that "the impetus of this legislation was not to expand regulation to places it's never been before"); *see also* Tr. p. 38-39 (AT&T counsel Tracy Hatch stating no intent in SB 2626 to "drag [CLECs] back in" to regulation).

II. If the Commission Does Amend The Rules, It Should Make Clear That No New Tariff Filings Will be Required Other Than Prospective Ones

At the Staff Workshop, Staff indicated that no new tariff filings needed to be made for ILECs, and that all changes would be accomplished prospectively. *See* Tr. p. 10:1-20; *See also* Tr. pp. 33:22-34:7. However, because the CLECs have never filed tariffs using the same format as the ILECs, does this mean that CLECs would need to re-file their tariffs as a result of the “significant change” in regulation? If the Commission does amend the rules and apply them to CLECs, it should also make clear that the amended rules apply only prospectively to both ILECs *and* CLECs. Thus, CLECs would not need to re-file all of their tariffs or price lists once the rules take effect, but rather, would need to follow the new format only when filing a tariff for a new product or service that is subject to the rules.

Cable’s success in the marketplace would not have occurred without provision of high quality, reliable service at an attractive price. Thus, no need exists for a “significant change” that would result in additional regulation of CLEC service. If there is a change, however, the Commission should make clear that re-filing of every CLEC tariff is not required as a result of the new regulations. Rather, as the Staff stated during the workshop, any new tariffs would comply with the rules, and therefore, the new rules would be prospective, with tariffs phased in gradually over time.

III. Rules, If Any, Governing Internet Posted Rates and Tariffs Should Be Flexible

Tariff filings tend to follow a certain format designed to be comprehensive by including certain elements and to follow Commission rules. However, that format, often designed for use by regulators as opposed to the general public, may not be the most comprehensible one for customers seeking to understand service offerings, and who may be

used to seeing web sites which lay out service pricing and other terms more informally and in a perhaps easier to read fashion. For tariffs or price lists that appear on web sites, there should be some leeway as to how the Internet tariff filings are to be formatted, with the hallmark being, will customers understand them? No specific format rules should exist for Internet filings of rates other than generally what they should contain.

IV. The Commission Should Clarify that ICBs Do Not Need to Be Filed, As Long As A Price List Is Published, Either on A Web Site or With the PSC

Several workshop participants at the March 30, 2010 workshop expressed concern that the proposed rule revisions could be read as requiring that ICB arrangements be filed with the Commission or on a web site. Specifically, there was concern that deletion of lines 8-10 on page 8 of the current staff draft would imply that ICBs now have to be filed with the Commission, because those lines currently state that, as long as a party files its tariff with the Commission (or presumably, posts it on a web site), it would not need to file the ICB arrangements with the Commission.⁶ At the workshop, Staff stated that no filing of ICBs has been required for the last 20 years, as long as the tariff is otherwise filed with the Commission, and therefore, these lines of the rule were unnecessary. *See e.g.*, pp. 11:1-13, 13:3-4 (Stating it's "not [Staff's] intent to make customer service arrangements be filed [at the Commission].")

Numerous parties expressed the concern that deleting these lines would imply that ICBs would now need to be filed. Given how many parties expressed concern over this deletion, FCTA is concerned that deleting this language could inadvertently impose an ICB

⁶ The lines Staff proposes to delete state: "The rates and charges for contract service arrangements for an individual customer need not be filed where the company's tariff provides a description of the circumstances under which such arrangements are offered for specified tariffed services."

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filing requirement on providers, even though that is not Staff's intent. There is a relatively simple fix that would solve this problem. FCTA proposes that Staff *keep* the language in lines 8-10, but change the word "file" to "publish" to ensure that parties still will not need to file their ICBs. FCTA's proposed change ensures that publishing the general tariff on a web site obviates the need to file the ICBs with the commission.

CONCLUSION

FCTA respectfully requests that the Staff adopt the positions set forth in the above comments.

Respectfully submitted this 7th day of May, 2010.



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<p style="text-align: center;">STATE OF FLORIDA</p>  <p style="text-align: center;">PUBLIC SERVICE COMMISSION</p> <p style="text-align: center;">3625 NW 82nd Avenue, Suite 400 Doral, Florida 33166-7602</p>	<p>May 10, 2010, 10:17 AM</p>
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Nowalsky , Bronston & Gothard, The Florida Bar	<none>	CLEC: Global refund:Lisa	05/05/2010	25672	400.00
D & E Water Resources, L.L.C.	WS905	Penalty:	05/07/2010	219797	130.00
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