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10 MAY 13 AM 11:06

COMMISSION
CLERK

Docket# 100288 - TL

May 13, 2010

HAND DELIVERED

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

Re: Petition of Quincy Telephone Company d/b/a TDS Telecom/Quincy, Smart City Telecommunications, d/b/a Smart city Telecom, GTC, Inc. d/b/a Fairpoint Communications, Northeast Florida Telephone Company d/b/a Nefcom, ITS Telecommunications Systems, Inc., and Frontier Communications of the South, LLC, for Waiver of Certain Rules Related to Service Quality of Waiver of Certain Reporting Requirements

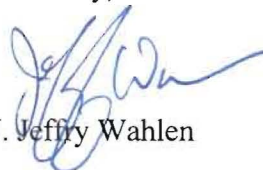
Dear Ms. Cole:

Enclosed for filing in the above docket are the original and 15 copies of the Petition of Quincy Telephone Company d/b/a TDS Telecom/Quincy, Smart City Telecommunications, d/b/a Smart city Telecom, GTC, Inc. d/b/a Fairpoint Communications, Northeast Florida Telephone Company d/b/a Nefcom, ITS Telecommunications Systems, Inc., and Frontier Communications of the South, LLC, for Waiver of Certain Rules Related to Service Quality of Waiver of Certain Reporting Requirements.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



J. Jeffrey Wahlen

- COM _____
- APA _____
- ECR _____
- GCL 13
- RAD _____
- SSC _____
- ADM JJW/jh
- OPC 1 Enclosure
- CLK Grant cc: All Parties of Record (w/enc.)

DOCUMENT NUMBER-DATE

04023 MAY 13 09

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by TDS Telecom/Quincy)
Telephone Company, Smart City)
Telecommunications LLC, d/b/a Smart City)
Telecom, GTC, Inc. d/b/a Fairpoint)
Communications, Northeast Florida Telephone)
Company d/b/a NEFCOM, ITS Telecommunica-)
tions Systems, Inc. Frontier Communications)
of the South, LLC, and for Waiver of Certain)
Reporting Requirements in Rule 25-4.0185)
and/or Waiver of Rule 25-4.066; 25-4.070;)
25-4.073; 25-4.110(6); and 25-4.0185, F.A.C.)
Relating to Service Quality)
_____)

DOCKET NO. 100288-TL

Filed: May 13, 2010

**PETITION OF QUINCY TELEPHONE COMPANY d/b/a
TDS TELECOM/QUINCY, SMART CITY TELECOMMUNICATIONS, LLC,
d/b/a SMART CITY TELECOM, GTC, INC. d/b/a FAIRPOINT COMMUNICATIONS,
NORTHEAST FLORIDA TELEPHONE COMPANY d/b/a NEFCOM,
ITS TELECOMMUNICATIONS SYSTEMS, INC., AND FRONTIER
COMMUNICATIONS OF THE SOUTH, LLC, FOR WAIVER OF CERTAIN RULES
RELATED TO SERVICE QUALITY AND WAIVER OF CERTAIN
REPORTING REQUIREMENTS**

Quincy Telephone Company d/b/a TDS Telecom/Quincy (“TDS TELECOM”), Smart City Telecommunications LLC d/b/a Smart City Telecom (“Smart City”), GTC, Inc. d/b/a Fairpoint Communications (“Fairpoint”), Northeast Florida Telephone Company d/b/a NEFCOM (“NEFCOM”), ITS Telecommunications Systems, Inc. (“ITS”), and Frontier Communications of the South, LLC (“Frontier”), (collectively the “Small LECs”), pursuant to Section 120.542, Florida Statutes and Rule 28-104.002, F.A.C., hereby file this Petition requesting a waiver of the requirements of Rules 25-4.0185, 25-4.066, 25-4.070, 25-4.073 and 25-4.110(6) relating to service

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04023 MAY 13 2010
FPSC-COMMISSION CLERK

quality or in the alternative a waiver of Rules 25-4.0185 relating to service quality reporting and 25-4.073 relating to answer times requirements. In support thereof, the Small LECs state:

A. PARTIES

1. TDS Telecom is an Incumbent Local Exchange Company (“ILEC”) and is classified under Florida Statutes as a small local exchange telecommunications company, because it was certificated by the Florida Public Service Commission before July 1, 1995 and had fewer than 100,000 access lines in service on that date.

2. Name and address of Petitioner TDS is:

TDS Telecom/Quincy Telephone
107 W. Franklin Street
Quincy, Florida 32351
Telephone: 850.875.5207
Facsimile: 850.875.5225

3. The person authorized to receive notices, communications and other documents in connection with this petition is:

Tom McCabe
TDS Telecom/Quincy Telephone
1400 Village Square Boulevard
Suite 3 - Box 329
Tallahassee, FL 32312-1231
Telephone: 850.875.5207
Facsimile: 850.875.5226
thomas.mccabe@tdstelecom.com

4. Smart City is an ILEC, and is classified under Florida Statutes as a small local exchange telecommunications company, because it was certificated by the Florida Public Service Commission before July 1, 1995 and had fewer than 100,000 access lines in service on that date.

5. Name and address of Petitioner Smart City:

Smart City Telecom
3100 Bonnet Creek Road (overnight delivery only)
P.O. Box 22555
Lake Buena Vista, FL 32830-2555

6. The person authorized to receive notices, communications and other documents in connection with this petition is:

Lynn B. Hall
Smart City Telecom
3100 Bonnet Creek Road (overnight delivery only)
P. O. Box 22555
Lake Buena Vista, FL 32830-2555
Telephone: 407.828.6730
Facsimile: 407.828.6701
lbhall@smartcity.com

7. GTC, Inc., d/b/a FairPoint Communications, is an ILEC, and is classified under Florida Statutes as a small local exchange telecommunications company, because it was certificated by the Florida Public Service Commission before July 1, 1995 and had fewer than 100,000 access lines in service on that date.

8. Name and address of Petitioner FairPoint is:

GTC, Inc. d/b /a Fairpoint Communications
502 Cecil G. Costin Sr. Blvd
Port St. Joe, Florida 32351
Telephone: 850.229.7315
Facsimile: 850.229.5141

9. The person authorized to receive notices, communications and other documents in connection with this petition is:

R. Mark Ellmer
GTC, Inc. d/b /a Fairpoint Communications
502 Cecil G. Costin Sr. Blvd
Port St. Joe, Florida 32351
Telephone: 850.229.7315
Facsimile: 850.229.5141
mellmer@fairpoint.com

10. Northeast Florida Telephone Company, d/b/a NEFCOM, is an ILEC and is classified under Florida Statutes as a small local exchange telecommunications company, because it was certificated by the Florida Public Service Commission before July 1, 1995 and had fewer than 100,000 access lines in service on that date.

11. Name and address of Petitioner NEFCOM is:

Townes Telecommunications Services Corporation
505 Plaza Circle, Suite 200
Orange Park, Florida 32073
Telephone: 904.688.0029
Facsimile: 904.688.0025

12. The person authorized to receive notices, communications and other documents in connection with this petition is:

Deborah Nobles
Townes Telecommunications Services Corporation
505 Plaza Circle, Suite 200
Orange Park, Florida 32073
Telephone: 904.688.0029
Facsimile: 904.688.0025
dnobles@townes.net

13. ITS Telecommunications Systems, Inc. is an ILEC and is classified under Florida Statutes as a small local exchange telecommunications company, because it was certificated by the

Florida Public Service Commission before July 1, 1995 and had fewer than 100,000 access lines in service on that date.

14. Name and address of Petitioner ITS is:

ITS Telecommunications Systems, Inc.
15925 SW Warfield Blvd.
P. O. Box 277
Indiantown, FL 34956
Telephone: 772.597.3161
Facsimile: 772.597.1139

15. The person authorized to receive notices, communications and other documents in connection with this petition is:

Donna J. Marreel
ITS Telecommunications Systems, Inc.
15925 SW Warfield Blvd.
P. O. Box 277
Indiantown, FL 34956
Telephone: 772.597.3161
Facsimile: 772.597.1139
donnam@itstelecom.net

16. Frontier Communications of the South, LLC, is an ILEC and is classified under Florida Statutes as a small local exchange telecommunications company, because it was certificated by the Florida Public Service Commission before July 1, 1995 and had fewer than 100,000 access lines in service on that date.

17. Name and address of Petitioner Frontier is:

Frontier Communications of the South, LLC
300 Bland Street
Bluefield, WV 24701
Telephone: 304.325.1688
Facsimile: 304.325.1483

18. The person authorized to receive notices, communications and other documents in connection with this petition is:

Angela McCall
Frontier Communications of the South, LLC
300 Bland Street
Bluefield, WV 24701
Telephone: 304.325.1688
Facsimile: 304.325.1483
Angie.mccall@frontiercorp.com

19. The agency affected by this Petition is the Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850.

B. LEGAL STANDARD

20. Section 120.542, Florida Statutes, states:

120.542. Variances and waivers

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.

* * *

Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section. An agency may limit the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved.

* * *

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic,

technological, legal, or other type of hardship to the person requesting the variance or waiver.

C. BACKGROUND

21. As incumbent local exchange companies, the Small LECs are required to comply with several service quality rules that prescribe periodic reporting requirements (25-4.0185), require that 90% of all requests for basic local telecommunications service be installed within three days of request when all schedule requirements relating thereto have been complied with (25-4.066), require that at least 90% of interrupted service be restored within 24 hours and service affecting troubles be cleared within 72 hours of report (25-4.070), impose standards for the time allowed to answer customer calls to repair offices (25-4.073), and require customer credits if a service interruption remains out of service more than 24hours (25-4.110(6)). These rule requirements do not apply to non-ILEC communication providers competing in their service areas.

22. In 2009, the Florida Legislature amended Chapter 364, Florida Statutes, by limiting the Commission's jurisdiction over the service quality of an ILEC to quality of service for basic local telecommunication service.¹

23. On October 2, 2009, the Commission issued a Notice of Adoption of Rules in Docket No. 080641-TP, which amended the application of several service quality rules to basic local telecommunications services as defined by Chapter 364, Florida Statutes. Thereafter, beginning in

¹ Section 364.02(1), Florida Statutes, defines "basic local telecommunications service" as: voice-grade, single-line, residential local exchange service that provides 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 an alphabetical directory listing.

January 2010, the amended rules required ILECs to begin reporting service quality results under Rule 25-4.0185 for basic customers only.

24. On February 10, 2010, the Commission issued a Notice of Proposed Agency Action approving modifications to AT&T's service guarantee program. As a result of the PAA order, which became final on March 5, 2010, the term "basic local telecommunications service" has now been interpreted by the Commission to mean a single-line, non-PIC'd residential line consistent with the Section 364.02(1), Florida Statutes. See Order Nos. PSC-10-0077-PAA-TL and PSC-10-0132-CO-TL (Docket No. 090461-TL).

25. Absent a waiver, the amended rules together with the clarified definition of "basic local telecommunications service" will require the Small LECs to make Florida-specific modifications to internal operating systems or perform manual audits to collect and report basic-only data for service installation and repair. With regard to answer times, the Small LECs use integrated voice response systems that allow customers to transfer to a live attendant. The call routing systems used by the Small LECs do not distinguish between residential basic and non-basic customers, and the Small LECs are not aware of a cost effective solution to separate calls between residential basic and non-basic customers.

D. REQUEST FOR WAIVER OF ALL QUALITY OF SERVICE STANDARDS

26. Pursuant to Rule 28-104.002, the Small LECs request a waiver of the requirements to comply with rules 25-4.0185, 25-4.066, 25-4.070, 25-4.073 and 25-4.110(6) [collectively "Quality of Service Standards"] relating to service quality requirements for basic residential customers. The Small LECs make this request on grounds that they believe that continuing to comply with these

rules for only a minimal number of their access lines will be a substantial hardship for the companies and because the effect of competitive forces in their service territories will force the Small LECs to achieve the statutory goal in Section 364.03(3), Florida Statutes, of reasonable customer service even without the Commission's Quality of Service Standards. They also believe that the resources currently being allocated to ensuring technical compliance with the Commission's Quality of Service Standards can be better spent reacting to the changing needs and desires of their customers. Given that the vast majority of their access lines are not subject to the Quality of Service Standards, the Small LECs believe it is time to let competitive forces and the need to keep customers satisfied guide the level of service provided to the customers of the Small LECs.

27. In Docket 080641-TP, the Commission amended some of the service quality requirements after taking into consideration changes in the telecommunications market and the new statutory provisions. However, at the time the Commission adopted amendments to the service quality rules, there was no analysis as to practicality or efficiency of continuing service quality rules on a small local exchange company considering the limited number of customers that would be considered basic customers subject to these rules. This was not possible at the time, because the definition of "basic local telecommunications service" had not yet been clarified.

28. As of year-end 2009, TDS Telecom had 8,020 residential access lines. Based on the definition of "basic local telecommunications services," TDS Telecom had 134 residential access lines that would meet the new definition of a basic service as of January 31, 2010.

29. As of year-end 2009, Smart City had 2,907 residential access lines in Florida. Based on the definition of “basic local telecommunications services,” Smart City had 249 residential access lines in Florida that would meet the new definition of a basic service as of January 31, 2010.

30. As of year-end 2009, Fairpoint had 39,388 residential access lines in Florida. Based on the definition of “basic local telecommunications services,” Fairpoint had 868 residential access lines in Florida that would meet the new definition of a basic service as of January 31, 2010.

31. As of year-end 2009, NEFCOM had 6,160 residential access lines. Based on the definition of “basic local telecommunications services,” NEFCOM had 11 residential access lines that would meet the new definition of a basic service as of January 31, 2010.

32. As of year-end 2009, ITS had 2,266 residential access lines. Based on the definition of “basic local telecommunications services,” ITS had 93 residential access lines that would meet the new definition of a basic service as of January 31, 2010.

33. As of year-end 2009, Frontier had 3,537 residential access lines in Florida of which 1,522 are in the Walnut Hill exchange and 2,015 are in the Molino exchange. Based on the definition of “basic local telecommunications services,” Frontier has 10 residential access lines in Walnut Hill that would meet the new definition of a basic service as of January 31, 2010. Frontier estimates that the number of residential access lines that would be considered basic service in its Walnut Hill exchange is approximately 23.

34. For the Small LECs as a group, approximately 1,295 of their total residential access lines (or less than 2.2%) qualify as “basic local telecommunication service” subject to the Commission’s quality of service rules.

35. The Small LECs assert that application of the service quality rules to the very small number of customers receiving “basic local telecommunication service” would be a substantial hardship, because compliance will require Florida specific modifications to internal operating systems in order to distinguish between residential basic and non-basic customers, or in the alternative to require a manual review of potentially thousands of work orders to identify those that may in fact fall under the definition of basic service. Since fewer than 2.2% of residential customers are classified as “basic,” the Small LECs do not believe that the costs associated with modifying operating systems or conducting manual audits is cost effective. Moreover, since market forces and desire to satisfy the customer will be the forces driving the level of service quality for over 97% of their access lines, the Small LECs assert that allowing the same should be applied to the remaining lines. This is particularly true given the low level of activity that is subject to the Quality of Service Standards.

36. In support of this waiver request, each of the Small LECs performed a manual audit of residential installs and repairs from September – November 2009. The results of the audits are as follows:

TDS BASIC RESIDENTIAL INSTALLS 2009

	September	October	November
Basic	2	2	2

TDS BASIC RESIDENTIAL REPAIRS 2009

	September	October	November
Basic	4	2	1

SMART CITY BASIC RESIDENTIAL INSTALLS 2009

	September	October	November
Basic	16	17	10

SMART CITY BASIC RESIDENTIAL REPAIRS 2009

	September	October	November
Basic	4	2	6

FAIRPOINT BASIC RESIDENTIAL INSTALLS

	September	October	November
Basic	19	40	17

FAIRPOINT BASIC RESIDENTIAL REPAIRS 2009

	September	October	November
Basic	36	17	16

NEFCOM BASIC RESIDENTIAL INSTALLS 2009

	September	October	November
Basic	0	0	0

NEFCOM BASIC RESIDENTIAL REPAIRS 2009

	September	October	November
Basic	0	0	0

ITS BASIC RESIDENTIAL INSTALLS 2009

	September	October	November
Basic	0	0	0

ITS BASIC RESIDENTIAL REPAIRS 2009

	September	October	November
Basic	0	0	0

FRONTIER BASIC RESIDENTIAL INSTALLS 2009

	August	September	October
Basic	2	6	2

FRONTIER BASIC RESIDENTIAL REPAIRS 2009

	August	September	October
Basic	4	0	1

37. The level of activity that would be subject to the rules during these sample periods is indicative of the level of activity that can be expected through out the year. The level of activity that would be subject to the rules is so small as to make modifying the companies' processes to comply with the rules whether modifying operating systems or manually collecting data an unnecessary operations expense.

38. The small number of basic customers and application of the rules also leads to unreasonable results or results that do not accurately reflect whether a company is providing reasonable customer service. For example, TDS had a total of six basic installs in September, October and November 2009. Rule 25-4.066 requires that 90% of requests for service be installed within 3 days. Ninety percent of 6 installs equals 5.4, which means that TDS would be in violation of the rule if it missed one of the six installs and would have needed to meet the deadline for all 6 installs (100%) to meet the 90% threshold. For the purposes of this example, let's assume TDS did miss one install within the 3 day time period, based on this information it is impossible to reach any conclusion as to the level of service quality that TDS provides to its customers. This example shows how strict application of the rules can lead to unreasonable, unfair and unintended results.

39. The rules requested to be waived are designed to facilitate various portions of Chapter 364, Florida Statutes, which are intended to ensure that ILECs provide reasonable service to customers. See e.g., Section 364.03, Fla. Stat. Each of the Small LECs is subject to competition for their basic services from wireless companies and other competitors such as cable companies. Each of the Small LECs is motivated to provide quality service to all of their customers, including their basic service customers, primarily by the forces of competition and the need to retain customers. As time has passed, the telecommunications market place has changed and competition has developed, the relative importance of the Commission's service quality rules as a motivating force for ILECs has diminished relative to market forces. The Small LECs believe that market forces and a commitment by the Small LECs to work on a case-by-case basis with the Commission to resolve customer

complaints (which is hereby given) are adequate to achieve the underlying purposes of the quality of service statutes in Chapter 364, Florida Statutes.

40. In light of the substantial hardship that the application of the Quality of Service Standards will cause, the low level of activity subject to the Quality of Service Standards and the manner in which the purposes of the statutes can be achieved without the rules, the Small LECs request that their request for a waiver of the Quality of Service Standards rules be granted. Doing so will allow the Companies to operate in a manner that they believe best meets the needs of all their customers while operating in a highly competitive marketplace as was intended with the 2009 legislation.

E. WAIVER OF ANSWER TIME REQUIREMENTS

41. If the Commission declines to waive all of the Quality of Service Standards, the Small LECs alternatively request that the Commission at least waive the requirements of Rule 25-4.073 relating to answer time. As shown below, making the system modifications necessary to ensure compliance with the answer time requirements in Rule 25-4.073 for basic service customers only would impose a substantial burden, and the goal of reasonable customer service will be achieved though the effect of competitive forces.

42. The Small LECs use integrated voice response (IVR) systems in which customers are able to perform certain tasks through the system to manage their account. Additionally, customers have the ability to opt out of the system to speak with a live attendant. The Small LECs use a call management system that directs the call to the next available attendant who may be located anywhere within their respective operations.

43. These call management systems are not capable of distinguishing between calls from basic and non-basic residential customers. The Small LECs are not aware of any cost effective measures to identify the calls separately.

44. In Docket No. 090550-TL, Verizon has filed for a temporary variance for this rule until such time as they are able to make system modifications that they estimate to be \$500,000 in which they will attempt to distinguish between basic and non-basic customers based on their telephone number. Although the Small LECs have not done a financial analysis to implement a similar solution we believe that there is no possibility of cost justifying system changes that would impact only 1,295 basic customers who may or may not ever call the local business office.

F. REQUEST FOR WAIVER OF REPORTING RULES

45. If the Commission denies the Small LECs' request for waiver of the Quality of Service Standards, including the answer time rule, the Small LECs request a variance from the periodic reporting requirements in Rule 25-4.0185.

46. Rule 25-4.0185 requires that the Small LECs file semi-annual report with the Commission demonstrating their level of compliance with the Quality of Service Standards. Although the particular circumstances of each of the petitioners is unique, in general, making potential modifications to their computer systems, or manually reviewing service orders to distinguish between basic and non-basic customers for reporting purposes, compiling the data to prepare the reports, and preparing and submitting the reports for the very small number of basic service customers would impose a burden on the Small LECs relative to the amount of useful information that doing so will yield. In lieu of filing periodic reports, the Small LECs propose that

the Small LECs and the Commission address customer service issues on an individual customer basis if and when a complaint is filed. The Small LECs believe that this approach will achieve the statutory goal of reasonable customer service without the expense associated with preparing and filing periodic reports.

47. The Small LECs believe that the level of customer complaints filed with the Commission is very low and demonstrates that operating on a case-by-case, individual complaint basis is a reasonable alternative to periodic reporting. For the period from January 1, 2009 to December 31, 2009, the level of customer complaints in total (whether founded or unfounded) filed with the Commission against each of the Small LECs is as follows:

TDS Telecom	3
Smart City	0
Fairpoint	8
NEFCOM	1
ITS	0
Frontier	<u>0</u>
Total	<u>12</u>

48. The companies believe that the reporting requirements in the rule can be replaced with a commitment to work with the Commission on an individual customer complaint basis, thereby achieving the underlying purpose of the statutes that form the basis for the reporting rules. The Small LECs do not believe the reporting combined residential basic and non-basic customers will provide the Commission with any relevant information as to whether they are meeting the Quality of Service Standards for the lines subject to the Commission's jurisdiction.

WHEREFORE, as more specifically described above, the Small LECs respectfully request the Commission approve its request for waiver of Rules 25-4.0185, 25-4.066, 25-4.070, 25-4.110(6)

and 25-4.073; or in the alternative approve their request for a waiver of Rule 25.0185 relating to the periodic reporting.

Respectfully submitted on May 12, 2010.



J. JEFFRY WAHLEN
OPAL MCKINNEY-WILLIAMS
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
Telephone: (850) 224-9115
Facsimile: (850) 222-7560
jwahlen@ausley.com
omckinney-williams@ausley.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by Hand Delivery on this 13th day of May, 2010, to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida, 32399-1300, and to J. R. Kelly, Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, FL 32399-1400



Attorney

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