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RECEIVED-PPSC  
10 JUL 19 PM 1:06  
COMMISSION  
CLERK

July 19, 2010

HAND DELIVERED

100288-TL

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

Re: *Amended* 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

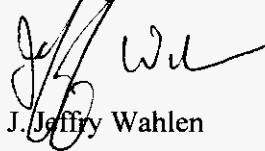
Dear Ms. Cole:

Enclosed for filing in the above docket are the original and 15 copies of the *Amended* 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 2 \_\_\_\_\_  
RAE 11 \_\_\_\_\_  
SSC 2 \_\_\_\_\_  
AD 1 \_\_\_\_\_  
OPC \_\_\_\_\_  
CLK \_\_\_\_\_

JJW/jh  
Enclosure

cc: All Parties of Record (w/enc.)

DOCUMENT NUMBER-DATE

05899 JUL 19 2010

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by TDS Telecom/Quincy )  
Telephone Company, Smart City ) DOCKET NO. 100288-TL  
Telecommunications LLC d/b/a Smart City )  
Telecom, GTC, Inc. d/b/a FairPoint )  
Communications, Northeast Florida Telephone ) Filed: July 19, 2010  
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 )  
\_\_\_\_\_ )

**AMENDED 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 ANSWER TIME  
RULE 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 **Amended** Petition<sup>1</sup> requesting a waiver of the

<sup>1</sup> This amended petition is similar to the original petition filed, but does not seek a waiver of all of the FPSC’s quality of service rules – only answer time and periodic reporting. Those small LECs that do not want to operate under the other quality of service rules may file a separate request for a service guarantee plan pursuant to the applicable rule.

requirements of Rule 25-4.0185, F.A.C., relating to service quality reports, and Rule 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), and that impose standards for the time allowed to answer customer calls to repair offices (25-4.073). 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 telecommunications service.<sup>2</sup>

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 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

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<sup>2</sup> 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.



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. DATA ABOUT SMALL LECs

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 Molino exchange is approximately 23.

32. 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.

33. The Small LECs assert that application of the answer time and reporting rules to the very small number of customers receiving “basic local telecommunications 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 to prepare periodic reports is cost effective.

34. Because the number of basic local residential service customers is small, it follows that the level of service activity for these customers is also low. For example, 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

35. The number of basic local telecommunications customers and the low level of service activity for these customers do not justify modifying the companies' call answering processes and data gathering systems to enable the Small LECs to (a) ascertain whether the Commission's answer time rule has been met for basic local telecommunications customers or (b) prepare the periodic service quality reports required by Commission rule. Manually collecting the data necessary to prepare periodic service quality reports on a routine basis would not be cost effective either.

E. WAIVER OF ANSWER TIME REQUIREMENTS

36. The Small LECs request that the Commission 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 through the effect of competitive forces.

37. 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.

38. 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.

39. 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, they 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.

40. Section 364.01(4), Florida Statutes, empowers the Commission to facilitate the transition to a more competitive telecommunications marketplace. Each of the Small LECs is

subject to an increasing amount of competition from wireless providers and VOIP providers using a cable platform. These competitive pressures provide a real incentive for the Small LECs to provide quality service, including answering customer calls in a timely manner, without regard to the Commission's answer time rule. The Small LECs are not aware of any statute specifying that LECs answer phone calls from customers within a specific amount of time and likewise are not aware of any statute specifically directing the FPSC to adopt a rule governing answer time. Given these considerations, the Small LECs believe the FPSC has the maximum discretion to waive the answer time rule as requested and that the purpose of the general statutes requiring reasonable customer service can be accomplished for answer time by letting the emerging market forces drive the efforts of the Small LECs.

#### F. REQUEST FOR WAIVER OF REPORTING RULES

41. The Small LECs also request a variance from the periodic reporting requirements in Rule 25-4.0185.

42. Rule 25-4.0185 requires that the Small LECs file semi-annual reports 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.

43. 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:

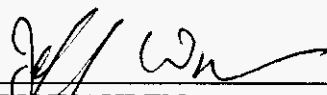
TDS Telecom	3
Smart City	0
FairPoint	8
NEFCOM	1
ITS	0
Frontier	<u>0</u>
Total	<u>12</u>

44. 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 that 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.



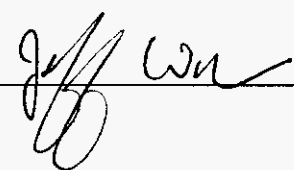
WHEREFORE, as more specifically described above, the Small LECs respectfully request the Commission approve its request for waiver of Rule 25-4.073 and Rule 25.0185 relating to the periodic reporting.

Respectfully submitted on July 19, 2010.

  
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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 19<sup>th</sup> day of July, 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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