

**Eric Fryson**

---

**From:** WOODS, VICKIE (Legal) [vf1979@att.com]  
**Sent:** Tuesday, February 05, 2013 3:44 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 120208-TP AT&T Florida's Comments  
**Importance:** High  
**Attachments:** 0336\_001.pdf

- A. Vickie Woods  
BellSouth Telecommunications, LLC d/b/a AT&T Florida  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5560  
[vf1979@att.com](mailto:vf1979@att.com)
- B. Docket No. 120208-TX: Petition of the Competitive Carriers of the South, Inc., to initiate rulemaking to revise and amend portions of Rule 25-22.0365, Florida Administrative Code
- C. BellSouth Telecommunications, LLC d/b/a AT&T Florida on behalf of Tracy W. Hatch
- D. 10 pages total (includes letter, certificate of service and pleading)
- E. BellSouth Telecommunications, LLC d/b/a AT&T Florida's Comments  
  
.pdf

DOCUMENT NUMBER-DATE

00719 FEB-5 2013

FPSC-COMMISSION CLERK



Tracy W. Hatch  
General Attorney

AT&T Florida  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301

T: (850) 577-5508  
th9467@att.com

February 5, 2013

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

**RE: Docket No. 120208-TX:  
Petition of the Competitive Carriers of the South, Inc., to initiate  
rulemaking to revise and amend portions of Rule 25-22.0365,  
Florida Administrative Code**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, LLC d/b/a AT&T Florida's  
Comments, which we ask that you file in the captioned docket.

Copies have been served to the Parties shown on the attached Certificate of  
Service list.

Sincerely,

s/Tracy W. Hatch

Tracy W. Hatch

cc: Parties of Record  
Gregory R. Follensbee  
Suzanne L. Montgomery

1043580

DOCUMENT NUMBER-DATE

00719 FEB-5 2013

FPSC-COMMISSION CLERK

**Certificate of Service  
Docket No. 120208-TX**

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 5th day of February, 2013 to the following:

Kathryn Cowdery, Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Tel. No.: (850) 413-6216  
[kcowdery@psc.state.fl.us](mailto:kcowdery@psc.state.fl.us)

Competitive Carriers of the South, Inc.  
Carolyn Ridley, President  
2078 Bowling Green  
Bowling Green, KY 42104  
Tel. No.: (615) 584-7372  
[carolyn.ridley@twtelecom.com](mailto:carolyn.ridley@twtelecom.com)

Competitive Carriers of the South, Inc.  
Garry Sharp, Executive Director  
P.O. Box 058303  
Nashville, TN 37215  
Tel. No.: (615) 665-8519  
[glsharp@comcast.net](mailto:glsharp@comcast.net)

Florida Cable Telecommunications  
Association, Inc.  
David A. Konuch  
246 E. 6th Avenue  
Tallahassee, FL 32303  
Tel. No.: 850-681-1990  
Fax. No.: (850) 681-9676  
[dkonuch@fcta.com](mailto:dkonuch@fcta.com)

Beth Keating  
Gunster Law Firm  
215 South Monroe Street, Suite 601  
Tallahassee, FL 32301-1839  
Tel. No.: 850-521-1706  
Fax. No.: (561) 671-2597  
[bkeating@gunster.com](mailto:bkeating@gunster.com)

Joint Administrative Procedures  
Committee  
Ken Plante, Coordinator  
680 Pepper Building  
111 W. Madison St.  
Tallahassee, FL 32399-1400  
Tel. No.: 850-488-9110  
Fax. No.: 850-922-6934  
[joint.admin.procedures@leg.state.fl.us](mailto:joint.admin.procedures@leg.state.fl.us)

Dulaney L. O'Roark III  
Verizon Florida LLC  
610 E. Zack Street, 5<sup>th</sup> Floor  
Tampa, Florida 33602  
Tel. No. (678) 339-5081  
Fax. No. (678) 339-8492  
[de.oroark@verizon.com](mailto:de.oroark@verizon.com)

s/Tracy W. Hatch

---

Tracy W. Hatch

**FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of the Competitive Carriers of the South, Inc., to initiate rulemaking to revise and Amend portions of Rule 25-22.0365, Florida Administrative Code ) Docket No. 120208-TX  
 )  
 )  
 )  
 ) Filed: February 5, 2013

**COMMENTS OF AT&T FLORIDA**

BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T Florida”) appreciates the opportunity file these Comments following the rule development workshop on November 15, 2012.<sup>1</sup> Based on the discussion at the workshop, AT&T Florida continues to maintain that no changes to Rule 25-22.0365, Florida Administrative Code (the “Rule”) are needed. The Rule currently provides a process for expedited proceedings and already encompasses the “flexibility” that Competitive Carriers of the South, Inc. (“CompSouth”) claims is needed. CompSouth has been unable to point to any failure of the Rule to accommodate any actual problem or case. Moreover, CompSouth’s proposed changes would not add anything to the Rule except uncertainty and vagueness and, in some circumstances, restrictions on the Commission’s ability to craft an appropriate expedited process. For the reasons discussed further below, the Commission should reject the changes to the Rule proposed by CompSouth and leave the Rule unchanged.

**I. General Comments**

In its Petition to Initiate Rulemaking, CompSouth claims that the current version of the Rule is not “customer friendly” because when a customer is out of service or the customer’s service is impaired, and when there is a dispute between carriers as to the carrier responsible for the problem, the operation of the Rule takes too long to resolve the intercarrier dispute.

<sup>1</sup> All references in AT&T Florida’s Comments are to the sections or subsections in the text of the draft proposed rule that was discussed at the November 15, 2012 workshop unless the context provides otherwise. Highlighted text indicates AT&T Florida’s suggested changes to the draft rule.

DOCUMENT NUMBER - DATE  
00719 FEB-5 2013  
FPSC-COMMISSION CLERK

CompSouth further alleges that the Commission needs additional “flexibility” to address CompSouth’s suggested problem scenarios. CompSouth’s proposed solution is to create a vague and ill-defined open-ended standard labeled as an “immediate and negative effect on the customer.” Application of this standard as proposed in the Rule would create a shortcut around the carefully crafted procedural provisions already in the Rule and would become the exception that will swallow the Rule. Under CompSouth’s proposal, a mere allegation of an “immediate and negative effect on a customer’s service” would require the Prehearing Officer to schedule a hearing as soon as possible on the Commission’s calendar regardless of the procedural time frames, or lack thereof. CompSouth’s proposed flexibility, with its desired rush to judgment and a “to be identified later” procedural process, would foster disputes as to the appropriate procedural process and bog down the expedited process at the particular time that a clear expeditious process is sought. Note that these types of procedural debates are already resolved by the process set forth in the current Rule – the process that CompSouth is trying to change. CompSouth’s proposed changes would impose an uncertain, unpredictable ad hoc process which is the antithesis of what a rule is supposed to do which is to promote predictability and certainty.

During the rulemaking workshop, CompSouth identified three scenarios that it asserts supports the need amend the Rule:

1. A 2009 complaint filed by Cbeyond against AT&T Florida regarding alleged failure to timely execute switch translations to properly complete calls.
2. A situation in March 2012 in which tw telecom was on the verge of filing a complaint against another carrier for persistent “dead air” inbound calling issues.
3. Chronic intermittent outages resulting in no trouble found (NTF) dispatches appear to be a growing system network issue where the customer is stuck in the middle.

None of these examples suggests – let alone supports – a need to amend the Rule. Cbeyond withdrew its complaint before the Commission took any action; the parties resolved the issues informally. Likewise, the tw situation apparently was settled informally between the involved parties without any litigation. CompSouth failed both in its petition and at the workshop to explain how CompSouth’s proposed super expedited litigation would in any way aid in resolving these scenarios any faster or more efficiently than they were. As for the third example, intermittent troubles, it is just a hypothetical that is incapable of being fixed unless one can track down the problem as the problem is happening. It is unlikely that any litigation, expedited or otherwise, could resolve this type of issue.

More importantly, CompSouth could not identify any instance in which any of its members or anyone else has either invoked or attempted to invoke the current Rule and that the Rule precluded the speed of resolution it desires here. Without having at least attempted to invoke the Rule, or cited an example that could not be contemplated by the Rule, CompSouth has no basis to argue that the Rule is in anyway deficient or should be changed.

Finally, any reasonable reading of the Rule as it currently stands clearly would allow the expedited process that CompSouth claims it needs. CompSouth would simply need to present sufficient information to justify such a process to the Prehearing Officer. Accordingly, there is simply no basis to support amendment of the Rule. AT&T Florida’s comments on the specific sections of the proposed rule follows.

## II. Comments on Specific Sections

### Section 1

CompSouth proposes the following addition to Section 1 of the Rule:

For purposes of this rule, an “immediate and negative effect on a customer” includes, but is not necessarily limited to, any out-of-service or any impeded service condition which significantly hinders the customer’s ability to utilize the service within design parameters. [P. 5, LL 3-6]

This language is at best vague, ambiguous and utterly open ended. The practical effect of this provision is that any matter with which a customer is dissatisfied could qualify as an “immediate and negative effect.” If adopted, this open-ended provision would be the definitional criteria that would trigger the expedited process. It is so broad that it would swallow the current Rule. Such a provision is inappropriate both as a substantive criteria of the Rule and as a matter of standard rulemaking. A rule can not contain such a vague and ambiguous provision and survive the mandated review by the Joint Administrative Procedures Committee.

### Section 2

CompSouth proposes to modify Section 2 of the Rule as follows:

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute informally and are encouraged to follow applicable terms of any agreements between the companies for dispute resolution. [P. 5, LL 7-9]

The proposed language appears to contemplate the notion that, notwithstanding contrary provisions of an Interconnection Agreement (“ICA”), a party may file for an expedited proceeding. While the proposed revisions do not contain an express statement to that effect, CompSouth’s discussion during the workshop indicated that circumvention of contractual dispute resolution provisions was its intent with this modification. The Commission cannot, without more, simply abrogate the provisions of parties’ ICAs by Rule.

## Section 9

CompSouth proposes to modify Section 9 of the Rule as follows:

(9) Disputes with an immediate and negative effect on a customer will be scheduled for hearing and disposition as early as the Commission's calendar will accommodate. Unless otherwise provided by an order of the Prehearing Officer, based on the unique circumstances of the case, the schedule for all other each [SIC] expedited cases ease will be as follows:

- (a) Day 0 – request for expedited proceeding, direct testimony and exhibits are filed;
- (b) Day 14 – deadline for filing a motion to dismiss, and response to the request for expedited proceeding;
- (c) Day 21 – deadline for filing a response to the motion to dismiss, if one is filed; and, deadline for filing petitions to intervene, and intervenor testimony and exhibits;
- (d) Day 42 – deadline for the Commission staff to file testimony;
- (e) Day 56 – deadline for respondent to file rebuttal testimony. [P. 7, LL 11-22]

CompSouth's proposed addition to Section 9 would mandate that the Commission schedule a hearing as soon there is an open date on the Commission's calendar. This belies the "flexibility" that CompSouth claims it wants the Commission to have and is problematic in many ways.

This provision restricts the Prehearing Officer's ability to tailor a schedule to the conditions of the case presented and forces a rush to judgment by the Prehearing Officer and the Commission. Because the procedural schedule must be backed up from the hearing date under the Commission's standard processes, CompSouth's proposal also raises substantial due process concerns regard a party's ability to respond to a complaint and adequately prepare for a proceeding. As noted above, the proposal will also foster procedural disputes at a time when CompSouth's stated goal is to quickly move forward to substantive resolution. Perversely, the proposed changes could also create issues against the Commission itself if a complainant is not satisfied with how fast the Commission can hear the case and levels a complaint that the Commission failed to follow its own rule.



The most glaring problem of CompSouth's proposed change is that CompSouth ignores the existing provision of the Rule in Section 9 that provides, "*Unless otherwise provided by order of the Prehearing Officer, based on the unique circumstances of the case*, the schedule for each expedited case will be as follows: . . ." [P. 7, LL 12-14 (emphasis added)] What CompSouth wants in terms of providing for an expedited procedure is already contemplated in current Section 9 of the Rule. Under the current Rule, all that is required is that the complainant present sufficient information to persuade the Prehearing Officer to set a procedural schedule other than set forth in the Rule. The existing flexibility already extant in Section 9 of the Rule completely eliminates any need for CompSouth's proposed changes.

### **Section 10**

To simply make Section 10 of the Rule consistent with its other proposed changes, CompSouth proposes to add the following phrase "the presence of any immediate of and negative effects of a customer". [P. 7, LL 22-25 and P. 8, L 1] This language simply perpetuates that problems inherent with this language discussed earlier.

### **Section 11**

CompSouth's proposed changes to Section 11 of the Rule are a reiteration of the proposed change in Section 9. In addition to the requirement that the Commission set a hearing as soon as the calendar will accommodate, CompSouth also proposes that the Commission establish in the Rule a "goal of a vote on a final Commission decision within \_\_\_\_\_ days of the initial dispute filing, even if meeting the goal requires a bench decision and assignment to a panel of two or more commissioners." [P. 8, LL 4-8] While CompSouth's proposal in Section 11 does not mandate a particular date for a Commission decision, it less than subtly attempts to push the Commission into a date sooner than currently provided in the Rule – within 120 days.

This will further limit the existing flexibility in the Rule. The existing flexibility in the Rule already will accommodate the expedited proceeding desired by CompSouth. CompSouth's additions here add nothing to the Rule other than the confusion and ambiguity already discussed regarding CompSouth's proposed language changes.

#### **Section 14**

See the comments to Section 10.

#### **Section 15**

Section 15 of the Rule generally provides that the Prehearing Officer will monitor an expedited proceeding and if it becomes apparent that an expedited proceeding is no longer warranted, the Prehearing Officer may end the expedited process and resort to a more appropriate procedural schedule. CompSouth proposes to place a limit on the Prehearing Officer's discretion to terminate the expedited process in the case of an immediate and negative effect on a customer's service, until "all immediate and negative effects on a customer's service" are removed. [P. 8, LL 20-25] This proposed change again belies CompSouth's desire for flexibility and illustrates CompSouth's attempt to use the expedited process as leverage to advance a complainant's cause. Such a limit is inappropriate.

### **III. Conclusion**

As shown consistently above, CompSouth has failed to provide any basis to support its position that the Rule must be amended. The principal phrase that CompSouth seeks to incorporate into the Rule – immediate and negative effect on a customer's service – is vague, ambiguous and overly broad. The Rule as written provides all the flexibility that is need to address cases expeditiously as necessary, and CompSouth has failed to present any evidence or even hypothetical in which the Commission's existing Rule is not sufficient. Accordingly,

AT&T Florida submits that CompSouth's proposed changes be rejected and that the Commission terminate the instant rulemaking proceeding.

Respectfully submitted this 5th day of February, 2013.

AT&T Florida

s/Tracy W. Hatch  
Suzanne L. Montgomery  
Tracy W. Hatch  
c/o Gregory R. Follensbee  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558  
sm6526@att.com  
th9467@att.com