

Crystal Card

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Sent: Tuesday, September 17, 2013 3:35 PM
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Subject: Docket No. 120208-TX
Attachments: CompSouth Post Workshop Comments (filed).PDF

Attached for electronic filing in the referenced docket, please find the Post-Workshop Comments of the Competitive Carriers of the South, Inc. As always, please don't hesitate to contact me if you have any questions whatsoever.

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b. **Docket 120208 -- Petition to initiate rulemaking to revise and amend Rule 25-22.0365, F.A.C., by Competitive Carriers of the South, Inc.**

c. On behalf of: Competitive Carriers of the South, Inc.

d. There are a total of pages: 20

e. Description: Post Workshop Comments



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September 17, 2013

VIA ELECTRONIC FILING - *FILINGS@PSC.STATE.FL.US*

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

Re: Docket No. 120208-TX - **Petition to initiate rulemaking to revise and amend Rule 25-22.0365, F.A.C., by Competitive Carriers of the South, Inc.**

Dear Ms. Cole:

Attached for electronic filing in the above-referenced docket, please find a copy of the Post-Workshop Comments of the Competitive Carriers of the South, Inc.

Thank you for your kind assistance with this filing. As always, please do not hesitate to contact me if you have any questions or concerns whatsoever.

Sincerely,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 618
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(850) 521-1706

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: **Petition to initiate rulemaking**)
to revise and amend Rule 25-22.0365,)
F.A.C., by Competitive Carriers)
of the South, Inc.)

Docket No. 120208-TX
Filed: September 17, 2013

POST-WORKSHOP COMMENTS
OF THE
COMPETITIVE CARRIERS OF THE SOUTH, INC. (COMPSOUTH)

The Competitive Carriers of the South, Inc. (“CompSouth”) hereby submit these post-workshop Comments consistent with the direction at the August 20, 2013, Staff Workshop. With these Comments, CompSouth also submits an alternative, modified Rule proposal (“modified Rule proposal”), which is responsive to the additional comments and concerns expressed at the workshop, as further explained herein. The modified Rule proposal is attached hereto (Attachments A-C).

I. BACKGROUND

1. On July 31, 2012, CompSouth submitted the Petition initiating this proceeding for the express purpose of seeking changes to Rule 25-22.0365, F.A.C., to provide for accelerated resolution of carrier disputes that directly impact a customer’s service.

2. CompSouth explained that, while the current Rule contemplates expedited resolution of certain carrier-to-carrier disputes within 120 days, resolution in that 4 month time frame is simply too long when presented with situations involving a consumer is left without service or with severely impaired service. As noted in the Petition, in such cases, the customer tends to be very anxious to find a quick solution to his/her service issues and will often turn to whichever provider can most expeditiously establish service to the consumer – whether it be the consumer’s

first choice, or the carrier creating the problem, or another carrier entirely. For most customers, it is simply not feasible to wait 120 days for a resolution of their service problems. Thus, in these situations, customers may find themselves disenfranchised of their ability to obtain service from their preferred carrier, while the carrier seeking to establish service is suddenly at risk of losing the customer – and the associated revenues – entirely.

3. To address these limited situations, CompSouth proposed changes to Rule 25-22.0365, F.A.C., with the intended purposes of: 1) further encouraging and facilitating informal resolution of such disputes; and 2) shortening the formal, dispute resolution process in situations where the informal approach proves unsuccessful.

4. On November 15, 2012, the Commission staff conducted a Rule Development workshop to discuss the changes to Rule 25-22.0365, F.A.C., proposed by CompSouth. Thereafter, on February 5, 2013, CompSouth offered comments, as well as a modified Rule proposal.

5. Over the course of the next few months, CompSouth engaged in ongoing dialogue with the various stakeholders regarding the CompSouth proposal. Reflecting those discussions, CompSouth offered a further modified version of the Rule proposal on July 3, 2013. This version was noticed for workshop on August 20, 2013.

6. Even after July 3, CompSouth continued work with the other stakeholder, namely AT&T, Verizon, and CenturyLink (ILECs) and FCTA, to try to craft a Rule that would reflect changes amenable to all. Consequently, at the August 20 workshop, CompSouth offered additional revisions that reflected, in particular, discussions with counsel for FCTA.

7. At the August 20 workshop, the stakeholders and Commission staff engaged in additional constructive dialogue. While CompSouth believes that certain philosophical differences may linger with regard to the Rule and its anticipated benefits, changes were discussed that appeared

to be acceptable to those participating at the workshop. As such, CompSouth again crafted a revised Rule proposal and offered the same for further discussion with the other stakeholders on September 5 and again on September 12. To date, no response has been received from the FCTA. On September 16, AT&T, Verizon, and CenturyLink indicated that they still have the same concerns voiced at the August workshop.

8. For ease of reference, the revised Rule proposal now offered by CompSouth is attached hereto in three versions: Attachment A reflects the post-August 20 workshop changes on the Rule proposal discussed at the workshop, while Attachment B reflects the post-August 20 workshop changes on the current version of the Rule. Attachment C is a clean copy of the modified Rule proposal that CompSouth addresses herein.

II. COMMENTS

9. The latest modified Rule proposal provides an even more narrowly crafted, detailed and limited approach to the need for a hyper-expedited process for resolving disputes that severely impair a customer's service. The situations to which this "accelerated" process would apply are more specifically defined, as are the situations in which the process would not be applicable. With these changes, concerns raised regarding due process and opportunities to respond are also addressed.

A. Additional Clarity/Greater Specificity

10. This latest modified Rule proposal, as reflected in Attachment A hereto, is responsive to the most persistent concern raised at the workshop, that being lack of specificity and clarity of both the process and the circumstances to which it would apply. Consistent with the discussion at the workshop, the reference to the accelerated process applying to situations in which "the

dispute prevents a prospective customer from switching to a new provider” has been removed due to concerns about the ambiguous nature of that phrase. In accordance with the proposed language as it now stands, the accelerated process would apply only in situations in which the dispute results in: a) a customer being out of service; or b) failure to expeditiously port a customer’s telephone number or transfer account information to the customer’s carrier of choice. Although more limited than earlier versions of CompSouth’s proposal, this latest modified Rule proposal nonetheless maintains the integrity of the original, designed purpose of CompSouth’s petition in that it provides a process that will avoid placing customers caught in the middle of a carrier dispute in the untenable position of having to switch their account to a carrier other than their carrier of choice in order to obtain service in a timely and reliable manner.

11. This latest version of the CompSouth Rule proposal also addresses concerns raised regarding situations to which the “accelerated” process should not apply. Specifically, this revised version specifies that the “accelerated” process cannot be used to address disputes that should otherwise be addressed in accordance with applicable interconnection agreement provisions. The revised proposal further specifies that the “accelerated” process should not apply to situations arising from billing disputes. These two clarifications ensure that the “accelerated” process cannot be utilized to bypass otherwise applicable, contractual dispute resolution processes and also cannot be used when the sole reason the end-use customer is out of service is because the customer’s carrier has been suspended/terminated as a result of a billing/payment issue with the carrier’s underlying provider.

B. Defined Process

12. This further modified proposal provides a more succinct, clearly defined process for handling complaints that directly cause a customer to lose service or prevent a customer from

switching carriers. As before, this process is outlined, step by step, in paragraph (13) of the modified Rule proposal. This more detailed, clarified version nonetheless retains the essential concepts originally tendered by CompSouth, such as the pre-Complaint meeting with Commission staff, but provides more detail as to the applicability of the process, modifications consistent with due process requirements, and more clearly defined timing of individual steps in the accelerated process. In response to concerns aired at the workshop, the modified Rule proposal also specifies that the hearing will be properly noticed and conducted no sooner than 21 days after the response to the Complaint is filed, which avoids conflict with paragraph (8). This newest version still provides, with added clarity, that the Prehearing Officer has the flexibility to determine whether or not pre-filed rebuttal testimony shall be required, as opposed to rebuttal testimony being provided orally on the stand.

C. Consistent with Due Process

13. With regard to due process, Section 364.16(6), Florida Statutes, specifically contemplates that the Commission would adopt an expedited process for resolving disputes between carriers, and that the final determination there under would be made “within 120 days.” As noted in prior Comments, CompSouth believes that the Legislature’s use of the word “within” clearly indicates that the Legislature contemplated that the Commission’s final decision could be made in less, even significantly less, than 120 days – just not more than 120 days. By the same token, Rule 28-106.208, Florida Administrative Code, contemplates that a hearing will not be conducted on less than 14 days’ notice, unless otherwise agreed by the parties. Consistent with these provisions, the further modified Rule proposal now contemplates a hearing no sooner than 21 days after a response, if any, is filed, which certainly provides sufficient time for noticing

consistent with the requirements of Chapter 120, F.S. and Chapter 28-106, Florida Administrative Code, as well as Section 364.16(6), F.S.

14. The modified Rule proposal does not conflict with either Section 120.569(2)(o), Florida Statutes, or Rule 28-106.211, Florida Administrative Code, which contemplate that an administrative law judge (in this case, the Prehearing Officer) will enter a scheduling order to ensure the “just, speedy, and inexpensive resolution” of a proceeding. The Rule also does not prevent or impair the Prehearing Officer’s ability to require a prehearing conference or otherwise require the parties to confer and resolve procedural matters consistent with Rule 28-106.209, Florida Administrative Code. The Rule is likewise consistent with Section 120.57(1)(b), Florida Statutes, in that it provides an opportunity to respond, present evidence and argument, conduct cross-examination, submit rebuttal evidence, and be represented by counsel.

15. The modified Rule proposal offered now by CompSouth addresses any readily cognizable areas of concern with regard to due process, including those identified at the August 20 workshop.

D. Tangible Benefits of Proposed Changes

16. As seemingly recognized at the August 20 workshop, there exists a very basic, philosophical difference regarding whether the changes proposed by CompSouth are necessary and/or represent some valuable addition to the dispute resolution process. Certainly, CompSouth and its members would not have embarked on this now 13-month process if the association and its members were not convinced that the proposed changes represent a very real value proposition. Undoubtedly, many disputes can be resolved simply through better communication between carriers, the process contemplated by the existing Rule, or through the various carrier

dispute mechanisms contemplated by interconnection agreements. There are, however, situations in which those approaches are simply not sufficient.

17. For instance, a business customer unable to receive telephone calls or emails because of an issue that is the subject of a carrier dispute is unlikely to wait patiently for that dispute to be resolved before taking action. As CompSouth's representative, Greg Darnell of Cbeyond explained at the very first workshop back in November 2012, businesses are particularly ill-equipped to function without telecommunications services for any length of time – much less 4 months. Understandably, in most instances, the business owner will seek an expeditious solution that will provide his/her business with service. With no assurance that a truly expedited complaint process is available, the most readily apparent solution available to the customer is to switch the business account to the provider that can ensure service immediately, whether or not that carrier is the customer's first choice. At that point, the carrier dispute becomes moot, perhaps without ever having been brought to the Commission's attention. The customer is, therefore, deprived of his right to choose his provider by mere delay of process, and the benefits of competition in the telecommunications market are restricted.

18. Whether or not there are numerous specific situations such as those described can be attributed to Florida is entirely beside the point. The scenarios CompSouth has presented are practical, realistic, and based upon information regarding experiences of individual CLECs. Even one situation, such as the Cbeyond dispute with AT&T Florida in 2009 discussed at the November 2012 workshop, is sufficient to demonstrate that the process as it stands today is inadequate to address disputes that have a direct and immediate impact on an end-users service. **Even if no new situations fitting the modified Rule proposal ever arise in Florida, there is**

no harm caused simply by virtue of adopting CompSouth's proposal. The process would simply not be used. It would, however, be there in the event it is needed.

19. The fact that few have pursued resolution of disputes under the currently codified 120-day process is no indication that a more accelerated process is not necessary. CompSouth surmises that this is likely due to the fact that the 120-day process is simply not sufficiently expeditious to address service-impacting disputes; thus, the dispute is either eventually resolved (fairly or not) between the carriers involved, or the customer is lost. A more accelerated, 60-day process would provide a viable option for seeking resolution of a dispute without extended delay that could cause a customer to opt for service with another carrier.

20. To be perfectly clear, the Rule also works both ways. Should a disputed issue impair to a customer, nothing prevents that customer's carrier from initiating a proceeding under the proposed accelerated process against a CLEC.

21. Moreover, CompSouth believes that, if implemented, the new accelerated process may serve as an added incentive to all parties in a dispute to find a mutually beneficial, negotiated solution to customer-impacting disputes. The new informal meeting requirement included in paragraph (2) should further promote negotiated solutions, thus limiting the frequency with which the accelerated process is utilized.

22. Again, this is not just a "CLEC rule," even though it is a CompSouth proposal. This is a customer rule. The real benefit is to ensure that customers are: 1) not harmed when caught in the middle of a carrier dispute; and 2) able to take full advantage of the competitive telecommunications market as contemplated by both Congress and the Florida Legislature. In this tough economic environment, businesses, particularly small businesses, can ill-afford any

situation that impacts their ability to communicate with their customers and run their business operations.

E. Workable Solution

23. As noted in prior CompSouth comments, it also should not be overlooked that this modified proposal is generally consistent with expedited dispute resolution provisions already contained in some interconnection agreements (“ICAs”). Thus, the parties to those ICAs have recognized that an expedited resolution can be had.¹ The modified Rule proposal suggested here is not, however, redundant of those ICA provisions and specifically provides that it does not apply when otherwise applicable ICA terms exist.

24. Moreover, a hyper-expedited process would not be unique to Florida. For instance, in Massachusetts, 220 C.M.R. 15.00, “Accelerated Docket For Disputes Involving Competing Telecommunications Carriers” provides a process encompassing a total of 73 days for dispute resolution. Pursuant to that provision, a decision is made with 21 days as to whether the dispute is appropriate for the expedited dispute resolution process, then the hearing is conducted and a decision made within the next 52 days.²

¹ See, for instance, ICA between FDN Communications and Sprint-Florida approved in Docket No. 041464-TP (which contemplates seeking 60-day expedited resolution before the Commission at Section 24.1); ICA between CenturyLink and US LEC approved in Docket No. 100367-TP (which contemplates 60-day resolution before the Commission at Section 24.1); ICA between AT&T and Cbeyond approved in Docket No. 070220-TP (which contemplates expedited resolution upon petition to the Commission at Section 11); and ICA between Verizon Florida Inc. and Sprint Communications adopted by ITC/DeltaCom, as approved in Docket No. 031098-TP (which contemplates a shortened, 5-day, pre-arbitration process for disputes that “directly or materially affect[s]” a customer’s service, to be followed by expedited arbitration under AAA Commercial Arbitration Rules).

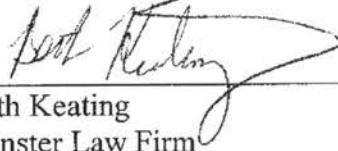
² <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/legal-division/dtc-regulations/dtc-regs/220-cmr-dte/>

III.

CONCLUSION

In sum, CompSouth strongly believes that changes are needed to provide an accelerated dispute resolution process designed for specific types of complaint situations that directly impact a customer's service, potentially forcing the customer to switch to a carrier other than his chosen provider. We have taken into account the further comments at the August 20 workshop and now offer a modified Rule proposal that CompSouth believes should alleviate the concerns raised, while still addressing an area of very real concern for CompSouth members. CompSouth asks, therefore, that the modified Rule proposal attached hereto be considered for adoption.

Respectfully submitted this 17th day of September, 2013, by:



Beth Keating
Gunster Law Firm
215 South Monroe Street
Suite 601
Tallahassee, FL 32301
On behalf of the Competitive Carriers of the South, Inc.

DOCKET NO. 120208-TX

COMPETITIVE CARRIERS OF THE SOUTH
REVISED RULE PROPOSAL
(ATTACHMENTS A-C)

Attachment A – Post Workshop Changes on Version Discussed At August 2013 Workshop

25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.

(1) The purpose of this rule is to establish an expedited process for resolution of disputes between telecommunications companies (“companies”).

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute informally. In the event that the parties are unable to resolve their dispute independently, a party intending to invoke the expedited dispute resolution process addressed herein shall, prior to filing a request under subparagraph (3), notify Commission staff of the dispute and request that Commission staff conduct an informal meeting. Such meeting shall be conducted within 7 days of the request for the purpose of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate effect on customers’ ability to receive service, anticipated discovery needs, and case scheduling.

(3) To initiate the expedited dispute resolution process, the complainant company must file with the Commission a request for expedited proceeding, direct testimony, and exhibits, and must simultaneously serve the filing on the other company involved in the dispute. The request for expedited proceeding is in lieu of the petition required by Rule 28-106.201, F.A.C.

(4) The request for expedited proceeding must include:

(a) The name, address, telephone number, facsimile number and e-mail address of the complainant company and its representative to be served, if different from the company;

(b) A statement of the specific issue or issues to be litigated and the complainant company’s position on the issue or issues;

(c) The relief requested;

(d) A statement attesting to the facts that the complainant company attempted to resolve the dispute informally and the dispute is not otherwise governed by dispute resolution provisions contained in the parties’ relevant interconnection agreement; and

(e) An explanation of why the use of this expedited process is appropriate. The explanation of why use of the expedited process is appropriate shall include a discussion of the following:

1. The number and complexity of the issues;

2. The policy implications that resolution of the dispute is expected to have, if any;

3. The topics on which the company plans to conduct discovery, including a description of the nature and quantity of information expected to be exchanged;

4. The specific measures taken to resolve the dispute informally; and

5. Any other matter the company believes relevant to determining whether the dispute is one suited for an expedited proceeding.

(5) Any petition for intervention shall provide the information required by paragraphs (4)(a)-(c) and (e) as it applies to the intervenor.

(6) The request for expedited proceeding shall be dismissed if it does not substantially comply with the requirements of subsections (2), (3) and (4), above. The first dismissal shall be without prejudice.

(7) The respondent company may file a response to the request. The response must be filed within 14 days of the filing of the request for expedited proceeding.

(a) The response shall include the name, address, telephone number, facsimile number and e-mail address of the respondent and the respondent’s representative to be served, if different from the respondent.

(b) The response to the request may include any information that the company believes will help the Prehearing Officer decide whether use of the expedited dispute resolution process is appropriate. Such information includes, but is not limited to:

1. The respondent’s willingness to participate in this process;

2. Statement of the specific issue or issues to be litigated from the respondent’s perspective, and the respondent’s position on the issue or issues;

3. A discussion of the topics listed in subparagraphs (4)(b)-(e)1.-5. above.

(8) No sooner than 14 days after the filing of the request for expedited proceeding under either paragraph (9) or (13) hereof, but promptly thereafter, the Prehearing Officer will decide whether use of the expedited proceeding is appropriate. The decision will be based on the considerations set forth in provisions of Section 364.16(6), F.S., the materials initially filed by the complainant company the factors provided in Section 364.058(3), F.S., the materials initially filed by the complainant company and, if a response is filed, the materials included in the response, as well as the timeliness of the complaint as it relates to the facts giving rise to the dispute.

(9) Except as provided in paragraph (13) hereof or 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:

Attachment A – Post Workshop Changes on Version Discussed At August 2013 Workshop

- (a) Day 0 – request for expedited proceeding, direct testimony and exhibits are filed;
- (b) Day 14 – deadline for filing a motion to dismiss, and a 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 the respondent to file rebuttal testimony.

(10) The Prehearing Officer shall decide whether post-hearing briefs will be filed or if closing arguments will be made in lieu of post-hearing briefs. In making this decision the Prehearing Officer will consider such things as the number of parties, number of issues, complexity of issues, preferences of the parties, and the amount of testimony stipulated into the record.

(11) The Commission shall make a decision on the dispute within 120 days of the complainant company's filing of the request for expedited proceeding, direct testimony and exhibits, except as otherwise provided in paragraph (13) hereof.

(12) Responses to discovery requests shall be made within 15 days of service of the discovery requests, unless the Prehearing Officer decides otherwise based on the unique circumstances of the case.

~~(13) In any instance in which a dispute between telecommunications companies results in: a) a customer being out of service; or b) the dispute prevents a prospective customer from switching to a new provider; or c) the dispute involves failure to expeditiously port a customer's telephone number or transfer account information to the customer's carrier of choice, the Commission shall proceed to resolve the matter in accordance with the following accelerated process:~~

~~— (a) Commission staff shall conduct an informal meeting with the companies, consistent with subsection (2), within seven (7) days of being notified of the dispute for purposes of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate effect on customers' ability to receive service, anticipated discovery needs, and case scheduling;~~

~~(13) Unless the Prehearing Officer otherwise determines in accordance with paragraph (8) hereof, a more accelerated process as set forth in this paragraph shall be available to address specific disputes that result in: a) a customer being out of service; or b) a failure to expeditiously port a customer's telephone number or transfer account information to the customer's carrier of choice. This process shall not be available for disputes otherwise addressed by dispute resolution provisions in any applicable interconnection agreement of the involved parties nor for disputes properly construed as billing disputes. If a dispute meeting the criteria hereof is not otherwise resolved through the informal meeting conducted in accordance with paragraph (2), then the following accelerated process shall be available:~~

~~(a) In the event the informal meeting does not result in a resolution to the dispute, The complaining party shall may file a request for expedited proceeding consistent with subparagraph (4) of this Rule with additional information regarding the basis for invoking the provisions of paragraph (13) hereof, along with any testimony and related exhibits that the complaining party intends to offer in the proceeding.~~

~~(b) A response, if any, to the request shall be filed within ten (10) days of the request for expedited proceeding and shall otherwise be consistent with subparagraph (7) of this Rule.~~

~~(c) Unless the Prehearing Officer otherwise determines in accordance with paragraph (8) hereof, A hearing will be scheduled as soon as the Commission calendar will accommodate, but no sooner than twenty-one (21) days following the filing of a response, if any, or the date that such response would have been due to be filed pursuant to this Rule.~~

~~(d) The Prehearing Officer will make a determination, based upon the scheduled date of the hearing, as to whether rebuttal testimony shall be prefiled or provided orally at hearing.~~

~~(e) For purposes of proceedings arising under this subsection, the Prehearing Office may determine that responses to discovery requests shall be made in less than the 15 days, but shall in no instance require responses to be made in less than five (5) days.~~

~~(f) To the extent that the Commission's calendar can accommodate, a complaint arising under this subsection shall be resolved within 60 days of the date that a request under subparagraph (13)(b) is filed. The Commission shall make a decision on the dispute within 60 days of the complainant company's filing of the request for expedited proceeding under this paragraph 13.~~

~~(g) Consistent with paragraphs (15) and (16) of this rule, the applicability of this accelerated process will be reassessed as factors affecting the complexity of the case, number of issues, number of parties, or customer impact change during the proceeding.~~

~~(134) Service of all documents on the parties shall be by e-mail, facsimile or hand delivery. An additional copy shall be~~

Attachment A – Post Workshop Changes on Version Discussed At August 2013 Workshop

furnished by hand delivery, overnight mail or U.S. mail if the initial service was by e-mail or facsimile. Filing of all documents with the Commission shall be by hand delivery, overnight mail or any method of electronic filing authorized by the Commission.

(145) The applicability of this rule to the proceeding will be reassessed as factors affecting the complexity of the case, number of issues, or number of parties change during the proceeding.

(156) Once the Prehearing Officer has determined that use of an expedited proceeding is appropriate, nothing in this rule shall prevent the Prehearing Officer from making a later determination that the case is no longer appropriate for an expedited proceeding based on the number of parties, number of issues or the complexity of the issues. Nothing in this rule shall prevent the Commission from initiating an expedited proceeding on its own motion.

Rulemaking Authority 350.127(2), 364.16(6) FS. Law Implemented 364.16(6) FS. History—New 8-19-04.

Attachment B – Post Workshop Changes on Current Rule

25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.

(1) The purpose of this rule is to establish an expedited process for resolution of disputes between telecommunications companies (“companies”).

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute informally. In the event that the parties are unable to resolve their dispute independently, a party intending to invoke the expedited dispute resolution process addressed herein shall, prior to filing a request under subparagraph (3), notify Commission staff of the dispute and request that Commission staff conduct an informal meeting. Such meeting shall be conducted within 7 days of the request for the purpose of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate effect on customers’ ability to receive service, anticipated discovery needs, and case scheduling.

(3) To initiate the expedited dispute resolution process, the complainant company must file with the Commission a request for expedited proceeding, direct testimony, and exhibits, and must simultaneously serve the filing on the other company involved in the dispute. The request for expedited proceeding is in lieu of the petition required by Rule 28-106.201, F.A.C.

(4) The request for expedited proceeding must include:

(a) The name, address, telephone number, facsimile number and e-mail address of the complainant company and its representative to be served, if different from the company;

(b) A statement of the specific issue or issues to be litigated and the complainant company’s position on the issue or issues;

(c) The relief requested;

(d) A statement attesting to the fact that the complainant company attempted to resolve the dispute informally and the dispute is not otherwise governed by dispute resolution provisions contained in the parties’ relevant interconnection agreement; and

(e) An explanation of why the use of this expedited process is appropriate. The explanation of why use of the expedited process is appropriate shall include a discussion of the following:

1. The number and complexity of the issues;

2. The policy implications that resolution of the dispute is expected to have, if any;

3. The topics on which the company plans to conduct discovery, including a description of the nature and quantity of information expected to be exchanged;

4. The specific measures taken to resolve the dispute informally; and

5. Any other matter the company believes relevant to determining whether the dispute is one suited for an expedited proceeding.

(5) Any petition for intervention shall provide the information required by paragraphs (4)(a)-(c) and (e) as it applies to the intervenor.

(6) The request for expedited proceeding shall be dismissed if it does not substantially comply with the requirements of subsections (2), (3) and (4), above. The first dismissal shall be without prejudice.

(7) The respondent company may file a response to the request. The response must be filed within 14 days of the filing of the request for expedited proceeding.

(a) The response shall include the name, address, telephone number, facsimile number and e-mail address of the respondent and the respondent’s representative to be served, if different from the respondent.

(b) The response to the request may include any information that the company believes will help the Prehearing Officer decide whether use of the expedited dispute resolution process is appropriate. Such information includes, but is not limited to:

1. The respondent’s willingness to participate in this process;

2. Statement of the specific issue or issues to be litigated from the respondent’s perspective, and the respondent’s position on the issue or issues;

3. A discussion of the topics listed in subparagraphs (4)(b)-(e)1.-5. above.

(8) No sooner than 14 days after the filing of the request for expedited proceeding, but promptly thereafter, the Prehearing Officer will decide whether use of the expedited proceeding is appropriate. The decision will be based on the considerations set forth in Section 364.16(6), F.S., the materials initially filed by the complainant company the factors provided in Section 364.058(3), F.S., the materials initially filed by the complainant company and, if a response is filed, the materials included in the response, as well as the timeliness of the complaint as it relates to the facts giving rise to the dispute.

(9) Except as provided in paragraph (13) hereof or 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:

(a) Day 0 – request for expedited proceeding, direct testimony and exhibits are filed;

Attachment B – Post Workshop Changes on Current Rule

- (b) Day 14 – deadline for filing a motion to dismiss, and a 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 the respondent to file rebuttal testimony.
- (10) The Prehearing Officer shall decide whether post-hearing briefs will be filed or if closing arguments will be made in lieu of post-hearing briefs. In making this decision the Prehearing Officer will consider such things as the number of parties, number of issues, complexity of issues, preferences of the parties, and the amount of testimony stipulated into the record.
- (11) The Commission shall make a decision on the dispute within 120 days of the complainant company's filing of the request for expedited proceeding, direct testimony and exhibits, except as otherwise provided in paragraph (13) hereof.
- (12) Responses to discovery requests shall be made within 15 days of service of the discovery requests, unless the Prehearing Officer decides otherwise based on the unique circumstances of the case.
- (13) Unless the Prehearing Officer otherwise determines in accordance with paragraph (8) hereof, a more accelerated process as set forth in this paragraph shall be available to address specific disputes that result in: a) a customer being out of service; or b) a failure to expeditiously port a customer's telephone number or transfer account information to the customer's carrier of choice. This process shall not be available for disputes otherwise addressed by dispute resolution provisions in any applicable interconnection agreement of the involved parties nor for disputes properly construed as billing disputes. If a dispute meeting the criteria hereof is not otherwise resolved through the informal meeting conducted in accordance with paragraph (2), then the following accelerated process shall be available:
- (a) The complaining party may file a request for expedited proceeding consistent with subparagraph (4) of this Rule with additional information regarding the basis for invoking the provisions of paragraph (13) hereof, along with any testimony and related exhibits that the complaining party intends to offer in the proceeding.
- (b) A response, if any, to the request shall be filed within ten (10) days of the request for expedited proceeding and shall otherwise be consistent with subparagraph (7) of this Rule.
- (c) A hearing will be scheduled as soon as the Commission calendar will accommodate, but no sooner than twenty-one (21) days following the filing of a response, if any, or the date that such response would have been due to be filed pursuant to this Rule.
- (d) The Prehearing Officer will make a determination, based upon the scheduled date of the hearing, as to whether rebuttal testimony shall be prefiled or provided orally at hearing.
- (e) For purposes of proceedings arising under this subsection, the Prehearing Office may determine that responses to discovery requests shall be made in less than the 15 days, but shall in no instance require responses to be made in less than five (5) days.
- (f) The Commission shall make a decision on the dispute within 60 days of the complainant company's filing of the request for expedited proceeding under this paragraph 13.
- (g) Consistent with paragraphs (15) and (16) of this rule, the applicability of this accelerated process will be reassessed as factors affecting the complexity of the case, number of issues, number of parties, or customer impact change during the proceeding.

(134) Service of all documents on the parties shall be by e-mail, facsimile or hand delivery. An additional copy shall be furnished by hand delivery, overnight mail or U.S. mail if the initial service was by e-mail or facsimile. Filing of all documents with the Commission shall be by hand delivery, overnight mail or any method of electronic filing authorized by the Commission.

(145) The applicability of this rule to the proceeding will be reassessed as factors affecting the complexity of the case, number of issues, or number of parties change during the proceeding.

(156) Once the Prehearing Officer has determined that use of an expedited proceeding is appropriate, nothing in this rule shall prevent the Prehearing Officer from making a later determination that the case is no longer appropriate for an expedited proceeding based on the number of parties, number of issues or the complexity of the issues. Nothing in this rule shall prevent the Commission from initiating an expedited proceeding on its own motion.

Attachment C— CompSouth Rule Proposal

25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.

(1) The purpose of this rule is to establish an expedited process for resolution of disputes between telecommunications companies (“companies”).

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute informally. In the event that the parties are unable to resolve their dispute independently, a party intending to invoke the expedited dispute resolution process addressed herein shall, prior to filing a request under subparagraph (3), notify Commission staff of the dispute and request that Commission staff conduct an informal meeting. Such meeting shall be conducted within 7 days of the request for the purpose of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate effect on customers’ ability to receive service, anticipated discovery needs, and case scheduling.

(3) To initiate the expedited dispute resolution process, the complainant company must file with the Commission a request for expedited proceeding, direct testimony, and exhibits, and must simultaneously serve the filing on the other company involved in the dispute. The request for expedited proceeding is in lieu of the petition required by Rule 28-106.201, F.A.C.

(4) The request for expedited proceeding must include:

(a) The name, address, telephone number, facsimile number and e-mail address of the complainant company and its representative to be served, if different from the company;

(b) A statement of the specific issue or issues to be litigated and the complainant company’s position on the issue or issues;

(c) The relief requested;

(d) A statement attesting to the fact that the complainant company attempted to resolve the dispute informally and the dispute is not otherwise governed by dispute resolution provisions contained in the parties’ relevant interconnection agreement; and

(e) An explanation of why the use of this expedited process is appropriate. The explanation of why use of the expedited process is appropriate shall include a discussion of the following:

1. The number and complexity of the issues;

2. The policy implications that resolution of the dispute is expected to have, if any;

3. The topics on which the company plans to conduct discovery, including a description of the nature and quantity of information expected to be exchanged;

4. The specific measures taken to resolve the dispute informally; and

5. Any other matter the company believes relevant to determining whether the dispute is one suited for an expedited proceeding.

(5) Any petition for intervention shall provide the information required by paragraphs (4)(a)-(c) and (e) as it applies to the intervenor.

(6) The request for expedited proceeding shall be dismissed if it does not substantially comply with the requirements of subsections (2), (3) and (4), above. The first dismissal shall be without prejudice.

(7) The respondent company may file a response to the request. The response must be filed within 14 days of the filing of the request for expedited proceeding.

(a) The response shall include the name, address, telephone number, facsimile number and e-mail address of the respondent and the respondent’s representative to be served, if different from the respondent.

(b) The response to the request may include any information that the company believes will help the Prehearing Officer decide whether use of the expedited dispute resolution process is appropriate. Such information includes, but is not limited to:

1. The respondent’s willingness to participate in this process;

2. Statement of the specific issue or issues to be litigated from the respondent’s perspective, and the respondent’s position on the issue or issues;

3. A discussion of the topics listed in subparagraphs (4)(b)-(e) 1.-5. above.

(8) No sooner than 14 days after the filing of the request for expedited proceeding, but promptly thereafter, the Prehearing Officer will decide whether use of the expedited proceeding is appropriate. The decision will be based on the considerations set forth in Section 364.16(6), F.S., the materials initially filed by the complainant company and, if a response is filed, the materials included in the response, as well as the timeliness of the complaint as it relates to the facts giving rise to the dispute.

(9) Except as provided in paragraph (13) hereof or 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:

(a) Day 0 – request for expedited proceeding, direct testimony and exhibits are filed;

(b) Day 14 – deadline for filing a motion to dismiss, and a response to the request for expedited proceeding;

Attachment C– CompSouth Rule Proposal

(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 the respondent to file rebuttal testimony.

(10) The Prehearing Officer shall decide whether post-hearing briefs will be filed or if closing arguments will be made in lieu of post-hearing briefs. In making this decision the Prehearing Officer will consider such things as the number of parties, number of issues, complexity of issues, preferences of the parties, and the amount of testimony stipulated into the record.

(11) The Commission shall make a decision on the dispute within 120 days of the complainant company's filing of the request for expedited proceeding, direct testimony and exhibits, except as otherwise provided in paragraph (13) hereof.

(12) Responses to discovery requests shall be made within 15 days of service of the discovery requests, unless the Prehearing Officer decides otherwise based on the unique circumstances of the case.

(13) Unless the Prehearing Officer otherwise determines in accordance with paragraph (8) hereof, a more accelerated process as set forth in this paragraph shall be available to address specific disputes that result in: a) a customer being out of service; or b) a failure to expeditiously port a customer's telephone number or transfer account information to the customer's carrier of choice. This process shall not be available for disputes otherwise addressed by dispute resolution provisions in any applicable interconnection agreement of the involved parties nor for disputes properly construed as billing disputes. If a dispute meeting the criteria hereof is not otherwise resolved through the informal meeting conducted in accordance with paragraph (2), then the following accelerated process shall be available:

(a) The complaining party may file a request for expedited proceeding consistent with subparagraph (4) of this Rule with additional information regarding the basis for invoking the provisions of paragraph (13) hereof, along with any testimony and related exhibits that the complaining party intends to offer in the proceeding.

(b) A response, if any, to the request shall be filed within ten (10) days of the request for expedited proceeding and shall otherwise be consistent with subparagraph (7) of this Rule.

(c) A hearing will be scheduled as soon as the Commission calendar will accommodate, but no sooner than twenty-one (21) days following the filing of a response, if any, or the date that such response would have been due to be filed pursuant to this Rule.

(d) The Prehearing Officer will make a determination, based upon the scheduled date of the hearing, as to whether rebuttal testimony shall be prefiled or provided orally at hearing.

(e) For purposes of proceedings arising under this subsection, the Prehearing Office may determine that responses to discovery requests shall be made in less than the 15 days, but shall in no instance require responses to be made in less than five (5) days.

(f) The Commission shall make a decision on the dispute within 60 days of the complainant company's filing of the request for expedited proceeding under this paragraph 13.

(g) Consistent with paragraphs (15) and (16) of this rule, the applicability of this accelerated process will be reassessed as factors affecting the complexity of the case, number of issues, number of parties, or customer impact change during the proceeding.

(14) Service of all documents on the parties shall be by e-mail, facsimile or hand delivery. An additional copy shall be furnished by hand delivery, overnight mail or U.S. mail if the initial service was by e-mail or facsimile. Filing of all documents with the Commission shall be by hand delivery, overnight mail or any method of electronic filing authorized by the Commission.

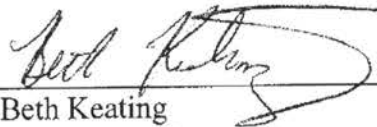
(15) The applicability of this rule to the proceeding will be reassessed as factors affecting the complexity of the case, number of issues, or number of parties change during the proceeding.

(16) Once the Prehearing Officer has determined that use of an expedited proceeding is appropriate, nothing in this rule shall prevent the Prehearing Officer from making a later determination that the case is no longer appropriate for an expedited proceeding based on the number of parties, number of issues or the complexity of the issues. Nothing in this rule shall prevent the Commission from initiating an expedited proceeding on its own motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by Electronic Mail this 17th day of September, 2013.

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