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Sent: Thursday, September 19, 2013 1:08 PM
To: Filings@psc.state.fl.us
Cc: Carolyn Ridley; David Konuch; Garry Sharp; Kathryn Cowdery; Ken Plante; Matthew Feil; O'Roark, Dulaney L; Pamela H. Page; Suzanne Montgomery
Subject: Docket No. 120208-TX - Verizon Florida LLC's Post-Workshop Comments
Attachments: 120208 VZ FL Post-Workshop Comments 9-19-13.pdf

The attached is submitted for filing on behalf of Verizon Florida LLC by

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The document consists of a total of 11 pages - cover letter (1 page), Comments (5 pages), Attachment A (3 pages), and Certificate of Service (2 pages).

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September 19, 2013 – **VIA ELECTRONIC MAIL**

Ann Cole, Commission 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:

Enclosed are Verizon Florida LLC's Post-Workshop Comments for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please call me at 678-339-5081.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

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Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to initiate rulemaking to revise) Docket No. 120208-TX
and amend Rule 25-22.0365, F.A.C., by) Filed: September 19, 2013
Competitive Carriers of the South, Inc.)
_____)

POST-WORKSHOP COMMENTS OF VERIZON FLORIDA LLC

Verizon Florida LLC (Verizon) files these comments in compliance with Staff's direction at the workshop held in this docket on August 20, 2013. These comments address the most recent version of the proposed revisions to Rule 25-22.0365, Expedited Dispute Resolution Process for Telecommunications Companies, which was distributed to the parties by Competitive Carriers of the South, Inc. (CompSouth) on September 5, 2013 (see Attachment A).

The proposed revisions to sections (2), (4) and (8) of Rule 25-22.0365 do not appear to be controversial and Verizon generally does not oppose them.¹ The proposed revisions that would create a new section (13), however, should not be adopted. They would establish an accelerated dispute resolution process that could be used for disputes between carriers resulting in "a customer being out of service" or "a failure to expeditiously port a customer's telephone number or transfer account information to the customer's carrier of choice." These revisions are unnecessary because CompSouth has not identified any such disputes that have required Commission resolution; the current rule provides the flexibility needed to address such disputes that might arise in the future; and the revisions would not help solve the alleged problem. Moreover, the proposed revisions could lead to abuses by parties

¹The reference to section (13) in proposed section (8), however, would need to be deleted if proposed section (13) is not adopted, as would the proposed change to section (9).

attempting to shoehorn their disputes into the categories eligible for accelerated treatment and would inflict a host of procedural difficulties that would make the process unworkable and unfair.

A. Proposed Section (13) Is Unnecessary

CompSouth has not shown that a problem exists that the Proposed Rule would solve. At the November 15, 2012 and August 20, 2013 workshops, CompSouth failed to point to a single instance where a customer was out of service or was experiencing a significant service issue that carriers were not able to fix without a Commission order. As a practical matter, carriers work out such problems before they reach the Commission. But even if such a dispute were to arise in the future, it could be addressed under the current rule, which provides that the prehearing officer may adopt a procedural order that adopts an expedited schedule that varies from the standard timeline "based on the unique circumstances of the case."² That provision allows the prehearing officer to deal with emergency situations such as when a customer is out of service or has trouble having his or her number ported. Proposed section (13) would take away the prehearing officer's flexibility in deciding how best to handle those situations.

Proposed section (13) is unnecessary for the additional reason that it would not solve the alleged problem. The accelerated process CompSouth proposes calls for a Commission decision within 60 days,³ but CompSouth has stated that the cases that would be eligible for accelerated treatment cannot wait two months for resolution. In

² See Rule 25-22.0365(9).

³ The 60-day deadline presumably does not include the time needed to address motions for reconsideration, which means in many cases the dispute will take longer than 60 days to resolve.

response to Staff's questioning at the November 15, 2012 workshop, CompSouth's spokesperson, Mr. Darnell, stated that carriers as a practical matter must resolve customer-affecting problems within two days to two weeks.⁴ The accelerated schedule proposed by CompSouth thus would be ineffective because it would not resolve disputed matters within that timeframe.

B. Proposed Section (13) Would be Subject to Abuse

Proposed section (13) would be subject to abuse because carriers would have an incentive to invoke the new process to obtain priority treatment and place their opponents at a disadvantage by forcing them to respond on an emergency basis. Moreover, the proposed categories of cases that would be eligible for accelerated treatment are ambiguous, leaving room for enterprising litigants to claim the process should be used for a wide variety of cases. This tactic could be especially disruptive if the dispute involved national operational or network issues that required upper management review. At a minimum, the responding party would be forced to respond to the request for accelerated resolution within ten days and would be left for at least another four days without knowing whether it would need to scramble for an emergency hearing. This process would increase the complaining party's leverage and could lead parties to file complaints involving important national disputes in Florida when they have a colorable argument that the accelerated process should be invoked.

⁴ Workshop transcript at 23-24.

C. The Accelerate Process Would Unfairly Disadvantage Responding Parties and Be Unworkable

The accelerated process proposed by CompSouth would place responding parties at an unfair disadvantage and create a number of practical problems that would make the process unworkable. For example:

- Responding parties would have to investigate the request and respond in ten days, making it difficult to develop an accurate and complete understanding of the underlying facts.
- There would be little time to consider motions to dismiss and as a practical matter proceedings could not be suspended while a motion was under review. A party with a valid legal defense thus most likely would be required to participate in the emergency proceedings while the motion was pending.
- It is not clear when or how issues would be identified. Presumably they would have to be identified sometime after the request was granted, which could mean the time between issue identification and hearing could be significantly less than 21 days.
- The accelerated process would leave little time for discovery or the resolution of discovery disputes. The responding party would have little opportunity to explore the complaining party's claims.
- The responding party might not be allowed to file rebuttal testimony and instead could be required to provide all testimony from the stand, placing the complaining party (which would prefile testimony) at an unfair advantage.
- It is not clear how a prehearing conference would fit into the process. If the prehearing officer required one, parties could have less than 21 days to identify witnesses and prepare exhibits. And there would be even less time between issue identification and the prehearing conference.
- The hearing could take place as soon as 21 days after the response, which, in addition to the timing issues just discussed, would create logistical problems such as making witnesses available on short notice.

Moreover, the process envisioned by CompSouth almost certainly would give rise to unintended consequences that would materialize as the process unfolded. In short,

such a process not only would be unfair and unworkable, but also could give rise to due process concerns.

For the foregoing reasons, and those stated in Verizon's previous comments, section (13) should not be adopted.

Respectfully submitted on September 19, 2013.

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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:

(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 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via electronic mail
on September 19, 2013 to:

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s/ Dulaney L. O'Roark III